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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1886.

No. 1320.

A. T. BEEDLE, APPELLANT,

vs.

FRANK O. BENNETT, AMELIA H. BENNETT, AND HENRY B. BENNETT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

FILED DECEMBER 27, 1886.

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1 At a stated term of the circuit court within and for the sixth judicial circuit and the western division of the southern district of Ohio, begun and held at the court-rooms in the city of Cincinnati, in the said division and district aforesaid, on the first Tuesday in October, in the year of our Lord one thousand eight hundred and eighty-six, and in the one hundred and eleventh year of the Independence of the United States of America—present, the Hon. George R. Sage, district judge—among the proceedings had were the following, to wit:

FRANK O. BENNET, AMELIA H. BENNET, and HENRY B. BENNET	No. 3350.
vs.	In Chancery.
A. T. BEEDLE.	

Be it remembered that heretofore, to wit, on the 15th day of May, A. D. 1883, came the said complainants, by their solicitors, Fallett, Hymen and Kelly, and filed in the clerk's office of said court
2 their certain bill of complaint against the defendants herein in words and figures following, to wit:

Bill of Complaint.

In the Circuit Court of the United States for the Western Division and Southern District of Ohio. In Equity.

To the honorable the judges of the circuit court of the United States for the sixth judicial circuit, within and for the western division, southern district of Ohio:

Frank O. Bennett, resident of the city of New York, in the State of New York; Amelia H. Bennet, resident of Belfast, county of Suffolk, State of New York, and Henry B. Bennet, resident of Hudson, county of St. Croix and State of Wisconsin, bring this their bill of complaint against A. T. Beedle, residing and doing business in the city of Troy, county of Miami, in said western division, southern district.

And thereupon your orators complain and say, upon information and belief, that Nelson W. Green was the original and first inventor of a new and useful improvement in wells, fully described in the letters patent hereinafter mentioned, and which had not been known or used before his said invention, and which, at the time of his application for a patent, as hereinafter mentioned, had not been for more than two years in public use or on sale with his consent or allowance.

3 And your orators, on information and belief, further show unto your honors that said Nelson W. Green, being so, as aforesaid, the first inventor and discoverer of said improvement, and being also a citizen of the United States, did on the 14th day of January, 1868, upon due application therefor, obtain letters patent of the United States for said invention in due form of law, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents of

the United States, bearing date the day and year last aforesaid whereby there was granted and secured to said Green, his heirs, administrators, or assigns, or intended so to be, for the term of seventeen years from and after the date of said letters patent, the full and exclusive right and liberty of making, constructing, and using, and vending to others to be used, the said invention and improvement, as set forth in said letters patent, which are now remaining on record in the Patent Office of the United States, and by virtue whereof said Green became and was the sole owner of all the rights and privileges granted and secured, or intended to be granted and secured, in and by said letters patent.

4 And your orators further show unto your honors that said Green, having for good and lawful cause surrendered said letters patent to the Commissioner of Patents, and having made due application therefor, and having in all things complied with the acts of Congress in such case made and provided, did, on the 9th day of May, 1871, obtain new letters patent, being for the same invention, for the residue of said term, and which were marked "reissue No. 4372," and were issued in due form of law, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents, and bearing date the day and year last aforesaid, as by the said last-mentioned letters patent or a duly authenticated copy thereof, ready in court to — produce-, will more fully and at large appear.

And your orators have ratified and adopted said reissue.

And your orators further show unto your honors that by virtue of said letters patent issued to said Green as aforesaid, and by virtue of various mesne assignments by, to, and from the said Green and others, duly made, executed, and recorded in the Patent

5 Office of the United States, as by such instruments or duly authenticated copies thereof, and of the certificate of such recording thereto affixed, ready in court to be produced, will duly and at large appear, your orators did, by virtue of the premises, become, and now are, the sole and exclusive owners of said letters patent and invention, and of all the rights and privileges granted and secured, or intended to be granted and secured, thereby in and for the State of Ohio, excepting therefrom the counties of Franklin, Clermont, and Tuscarwas.

And that since said patent has been issued the owners thereof have invested and expended large sums of money and have been to great trouble in and about said invention and for the purpose of carrying on the business of constructing said wells and using the same and making the same profitable to themselves and useful to the public, and that said invention has been and is of great benefit and advantage, and that many wells were constructed and made according to said invention and sold by said your orators to great advantage to the public, and that the public have generally acknowledged and acquiesced in the aforesaid rights of your

6 orators, and your orators believe that they will realize and receive large gains and profits therefrom, if infringements by said defendant and his confederates shall be prevented.

And your orators further show unto your honors that Wm. D. Andrews and George H. Andrews, in connection with Nelson W. Green, Orlando Bennet, and Platt Conklin, then being the owners of said reissue letters patent for the county of Queens, in the State of New York, did in the month of April, 1872, file a bill in the circuit court of the United States for the eastern district of New York against Theodore A. Carman for infringement of said reissue letters patent, and praying for an injunction and an account; that said Carman appeared in said suit and filed an answer denying infringement and setting up that Nelson W. Green was not the first and original inventor of the invention patented by said reissue letters patent, and alleging that before the invention thereof by said Green the same had been known to and used by many persons in different parts of the United States, and had been described in patents and in many printed publications; that said Green had forfeited his right
7 to a patent by said invention having been in public use and on sale for more than two years before his application for letters patent therefor; that said Green had abandoned his invention and dedicated it to the public, and that said reissue letters patent were for an invention different from that described in said original letters patent, and were therefore null and void.

That the said complainants filed a replication to said answer, and a very large amount of testimony was taken on both sides, the record on the part of complainants amounting to fourteen hundred printed pages, and that on the part of the defendant amounting to more than twelve hundred printed pages, the taking of said testimony having been commenced in June, 1872, and concluded in November, 1873.

That said testimony was taken at many different places, among them at Detroit, Mich., Chicago, Ill., Amherst, Mass., Middletown, Conn., and at many cities and villages in the central and western parts of the State of New York, as well as in the city of New York, and witnesses were brought from several adjoining States and the District of Columbia, and that the evidence comprises the testimony of about one hundred and seventy witnesses.

8 That said suit was brought to a hearing on pleadings and proofs, and was elaborately argued by eminent counsel on both sides, the argument consuming nineteen days in delivery; that said suit was taken under advisement by the court, which thereafter rendered its decision, giving an elaborate opinion, overruling all the defendant's defenses, holding said reissue letters patent valid, and directing a decree for the complainants, in conformity with the prayer of the bill of complaint, for an account of the profits and damages, which decree was duly entered, and directing a perpetual injunction, which was duly issued, as by the record and proceedings in said suit now remaining in the office of the clerk of said court, or a duly authenticated copy thereof, will appear.

And your orators further show unto your honors that since said adjudication numerous injunction- have been issued by said court against persons using said invention in infringement of said reissue letters patent.

And your orators further show unto your honors that William D. Andrews, George H. Andrews, and Nelson W. Green, then being the owners of said reissue letters patent for the county of Hennepin, in the State of Minnesota, did, in the month of Nov.
9 and December, 1876, and January, 1877, file separate bills in the circuit court of the United States for the district of Minnesota against O. E. Spear, Joel B. Bassett, Sweet W. Case, Stephen Pratt, Robert L. Pratt, William L. Nichols, Anthony Kelly, George B. Wright, and De Witt R. Wagner, for infringement of said reissue letters patent, and praying for injunction and accounts; that the several defendants appeared in said suit by the same counsel, and each filed the same answer, denying the infringement and setting up that the reissue letters patent were false, fraudulent, and untrue, and not for the same invention as patented and claimed in the original letters patent, and therefore void and of no effect; that said N. W. Green was not the first or original inventor of the invention patented by said reissue letters patent, and alleging that long prior to the invention thereof by said Green the same had been described in certain letters patent, applications for letters patent, and in many books, pamphlets, and publications, and that said Green had forfeited his right to a patent by reason of the inventions in different parts of the United States; that said Green had forfeited his right to a patent by reason of the invention having been in public use and on sale for more than two years before his application for letters patent therefor; that any letters patent issued to Green
10 were obtained by fraud and deceit, and that he had abandoned the invention and dedicated it to the use of the public.

That said complainants filed replications to said answers, and the court permitted the several defendants to unite their defenses, the evidence taken in one case to be used in all.

That the suit against George B. Wright was selected for trial and a large amount of testimony taken, nearly sixty witnesses having been examined, in five different States, during the months of August, September, October, November, and December, 1877.

That said suit was brought to a hearing on pleadings and proofs. The entire evidence in the previous suit against Theodore A. Carman was submitted to the court and the case thoroughly argued by able counsel in December, 1877; that the said suit was taken under advisement by the court, which thereafter rendered its decision overruling all the defendant's defenses, holding said reissued letters patent valid, and directing decrees for complainants in conformity with the prayer of the bills of complaint for an account of profits and damages, which decree was duly entered in each of the several cases, and directing perpetual injunctions, which were duly
11 issued, as by the records and proceedings in said suits, now remaining in the office of the clerk of said court, or duly authenticated copies thereof, will appear.

And your orators further show unto your honors that since said adjudication by the circuit court of the United States for the district of Minnesota large numbers of injunctions have been issued by said

court against persons using said invention in infringement of said reissue letters patent.

And your orators further show that Henry B. Hine and Amos T. Stephenson, as assignees of the said "reissue No. 4372" for the county of Elkhart, in the State of Indiana, duly filed their bill in equity against Jacob Wahl and against Henry S. Wright in the circuit court of the United States for the district of Indiana for infringement of said letters patent, for injunction and account; that said defendants filed their answers denying the validity of said letters patent and making all the usual defenses; that a large amount of testimony was taken in said cases during the years 1878 and 1879 up to the trial; that the cases were vigorously contested by able counsel on the part of the defendants; that the arguments occupied five days in the month of March, 1879.

That the court held the matter under advisement and thereafter overruled all the defenses; and thereupon, on April 16, 1879,
12 the decree of the said court was duly entered conformably to the prayer of the bill, adjudging the said reissue No. 4372 to be good and valid in law, and decreeing a perpetual injunction against the defendants.

All of which will more fully and at large appear by a duly authenticated copy of the said proceedings and decrees in court to be produced.

And said defendants thereupon appealed from the decision of the circuit court as aforesaid to the Supreme Court of the United States, where the case came on for a hearing Nov. 3d, 1882, and on Monday, Dec. 18th, the decision of Judge Gresham in both cases was by the said Court affirmed.

And your orators further show that William D. Andrews, George H. Andrews, and Nelson W. Green, then being the owners of the reissue letters patent mentioned in the said bill for the county of Madison, in the northern district of New York, did, in the month of April, 1879, file a bill in the circuit court of the United States for the northern district of New York against A. Tayler Cross for infringement of said reissued letters patent, and praying for injunction and account; that the said defendant appeared in said
13 suit by counsel and filed an answer denying the infringement and setting up that reissue letters patent was not a valid patent; that it did not describe any new or patentable invention; that Nelson W. Green was not the first and original inventor of the invention therein described and patented, and that the said invention had been in public use for more than two years before the said Green applied for his said letters patent, and that the said Green had abandoned his said invention and dedicated it to the public.

That said complainants filed a replication to said answer, and that a large amount of testimony was taken and stipulated into said case from other cases, and that said suit was brought to a hearing on pleadings and proofs in March, 1881, at the term of court held in the city of Utica, in said district, his honor Samuel Blatchford presiding; that the said suit was taken under advisement by the court, which thereafter rendered its decision overruling all the defendants'

defenses, holding said reissue letters patent valid, and directing a decree for complainants in conformity with the prayer of the said bill of complaint for an account of profits and damages, which decree was duly entered in the said cause, directing a perpetual injunction, which was duly issued, as by the records and proceedings
14 in said suit now remaining the office of the clerk of said court will appear.

Yet the said defendant, well knowing the premises and the rights secured to your orators aforesaid, but contriving to injure your orators and to deprive them of the benefits and advantages which might and otherwise would accrue unto them from said invention, after the reissuing of said letters patent as aforesaid, and before the commencement of this suit, did, as your orators are informed and believe, within the said district of Ohio, and county of Miami, and in other places in said southern district of Ohio, without the license or allowance and against the will of your orators, they being the owners of said reissue letters patent in, to, and for the State of Ohio, excepting the counties of Franklin, Clermont, and Tuscarawas, and in violation of their rights and in infringement of the aforesaid letters patent, unlawfully, and wrongfully, and in defiance of the rights of your orators, make, sell, and use wells embracing said invention in the city of Troy, county of Miami, and State of Ohio aforesaid, and that he still continues and threatens so to do; but how many of said wells your orators are unable to say, but pray a discovery thereof; and that he is threatening to make, sell, and use the aforesaid wells in larger quantities, and to supply the market therewith, and to continue to use the wells as con-
15 structed by him, all in defiance of the rights acquired by and secured to your orators as aforesaid, and to their great and irreparable loss and injury, and by which they have been and still are being deprived of great gains and profits, which they might and otherwise would have obtained, but which have been received and enjoyed, and are being received and enjoyed, by said defendant by and through his aforesaid unlawful acts and doings.

And your orators further show unto your honors, on information and belief, that said defendant has one or more of said wells, and is now using the same, and has made and realized large profits and advantages therefrom, but to what extent and how much exactly your orators do not know, and pray a discovery thereof.

And your orators say that the use of said invention by said defendant and his preparation for and avowed determination to continue the same, and his other aforesaid unlawful acts in disregard and defiance of the rights of your orator, have the effect to encourage and induce others to venture to infringe said patent in disregard of your orator's rights.

And your orators further show unto your honors that they have caused notice to be given to said defendant of said infringements, and of the rights of your orators in the premises; but he has
16 disregarded said notice and still continues to make, sell, and use the same.

And your orators pray that said defendant, A. T. Beedle, and his servants, agents, attorneys, and workmen, and each and every of them, may be restrained and enjoined delivering, working, or putting into practice, operation, or use, or in anywise counterfeiting or imitating the said invention or any part thereof, or any wells made in accordance therewith, or like or similar to those which he has heretofore made or used; and that the said defendant may be decreed to pay the costs of this suit, and that your orators may have such further relief or such other relief as to this honorable court shall seem meet, and as shall be agreeable to equity:

May it please your honors to grant unto your orators a provisional or preliminay injunction, issuing out of and under the seal of this honorable court, commanding, enjoining, and restraining the said defendant, A. T. Beedle, and his servants, agents, attorneys, and workmen, and each and every of them, as is hereinbefore in that behalf prayed.

And forasmuch as your orators can have no adequate relief except in this court, to the end, therefore, that the said defendant may, if he can, show why your orators should not have the relief hereby prayed, and may, upon his corporal oath and according to his
17 best and utmost knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to the premises, and to all the several matters hereinbefore stated and charged as fully and particularly as if severally and separately interrogated as to each and every of such matters, and that he may be compelled to account for and pay to your orators the profits by him acquired and the damage suffered by your orators from the aforesaid unlawful acts, and that the court may assess said profits and damages, and may increase the damages to a sum not exceeding three times the amount thereof:

May it please your honors to grant unto your orators the said writ of subpœna issuing, out of and under the said seal of this honorable court, directed to the said defendant, commanding him, by a certain day and under a certain penalty, to be and appear in this honorable court, then and there to answer the premises, and to stand to and abide such order and decree as may be made against him.

And your orators will ever pray, etc.

FRANK O. BENNET ET AL.,
Complainants,
Per CHARLES G. DODGE, *Ag't.*

FOLLETT, HYMAN AND KELLEY,
Solicitors for Complainants, of Counsel.

18 UNITED STATES OF AMERICA.

WESTERN DIVISION, SOUTHERN DIST. OF OHIO,
County of Miami:

On this twelfth day of May, 1883, before me appeared Charles G. Dodge, to me personally known, and who, being by me duly sworn, did depose and say that he is the lawful agent of the complainants

above named; that he has read the foregoing bill in equity and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters herein stated on information and belief, and as to those matters he believes it to be true.

[SEAL.] C. N. BURNS,
Notary Public, Miami County, Ohio.

I am security for costs.

——— ———.

And afterwards, to wit, on the 15th day of May, A. D. 1883, there was issued out of the clerk's office of said court our certain subpœna in chancery directed to the marshal of the district and against the defendants herein; said subpœna is clothed in the words and figures following, to wit:

Subpœna.

UNITED STATES OF AMERICA, } ss:
Southern District of Ohio, }

19 The President of the United States of America to the marshal of the southern district of Ohio, Greeting:

You are hereby commanded to summon A. T. Beedle, citizen of and resident in the State of Ohio, if he be found in your district, to be and appear in the circuit court of the United States for the southern district of Ohio aforesaid, at Cincinnati, on the first Monday in July next, to answer a certain bill in chancery filed and exhibited in said court against him by Frank O. Bennet *et al.*, citizen of and resident in the State of New York.

Hereof you are not to fail under the penalty of the law thence ensuing.

And have you then and there this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the United States, this 15th day of May, A. D. 1883, and in the 107th year of the Independence of the United States of America.

Attest: [SEAL.] W. C. HOWARD, *Clerk.*

MEMORANDUM.—The said defendant is required to enter his appearance in this suit in the clerk's office of said court on or before the first Monday of July 1883; otherwise the said bill may be taken *pro confesso.*

W. C. HOWARD, *Clerk.*

20 And afterwards, to wit, on the 15th day of May, A. D. 1883, the following bond was filed in the clerk's office of said court in this cause clothed in the words and figures following, to wit:

Cost Bond.

In the Circuit Court of the United States for the Southern District of Ohio, Western Division.

FRANK O. BENNET *et al.*
vs.
A. T. BEEDLE. } No. 3350.

I hereby acknowledge myself security for costs in the above cause.
MICHEAL DURNER. [SEAL.]

Taken and acknowledged before me this fifteenth day of May, 1883.
[SEAL.] CHARLES R. NEVIN,
Deputy Clerk U. S. Circuit Court, S. D. O.

SOUTHERN DISTRICT OF OHIO, *ss:*

I, Micheal Durner, a resident of said district, do solemnly swear that after paying my just debts and liabilities I am worth ten thousand dollars in real estate and personal property within the jurisdiction of this court and subject to execution, levy, and sale.
MICHEAL DURNER.

21 Subscribed in my presence and sworn to before me this fifteenth day of May, A. D. 1883.
[SEAL.] CHARLES R. NEVIN,
Deputy Clerk U. S. Circuit Court, S. D. O.

And afterwards, to wit, on the 22d day of May, A. D. 1883, came the marshal of the district aforesaid, to whom the said subpœna was in form directed, and returned the same into the clerk's office of said court, with his proceedings thereon endorsed in the words and figures following, to wit:

Marshal's Return.

I received this writ at Cincinnati, Ohio, on May 16th, 1883, and served the same in Troy, Miami county, Ohio, on May 18th, 1883, as follows: By copy hereof to A. T. Beedle, personally, at 11.30 a. m.
LOT WRIGHT,
U. S. Marshal S. D. O.,
By C. E. TWIFORD, *Deputy.*

Service	2 00
Copy	50
83 miles	4 98
	87 48

And afterwards, to wit, on the 23d day of June, A. D. 1883, the following appearance of Sterne and Peck was filed in the clerk's office of said court in this cause; said appearance is in the words and figures following, to wit:

22 *Appearance of Stern and Peck.*

United States Circuit Court, Southern District of Ohio.

William C. Howard, Esq., clerk U. S. C. C., S. D. O.

SIR: You will please enter our appearance for defendant in the above case, in which Frank O. Bennet, Amelia H. Bennet, and Henry B. Bennet are complainants and A. T. Beedle is defendant.

STERN AND PECK,
Sol'r. for Def't's.

And afterwards, to wit, on the 16th day of August, 1883, the following stipulation was filed in the clerk's office of said court in this cause clothed in the words and figures following, to wit:

Stipulation as to Withdrawal, &c.

Circuit Court of the United States, Southern District of Ohio.
In Equity.

FRANK O. BENNET, HENRY B. BENNET, and AMELIA H. BENNET
vs.
A. T. BEEDLE. } No. 3350.

It is hereby stipulated and agreed by the parties hereto that in all suits brought by Follett, Hyman and Kelley, as attorneys for the above complainants, against the par*ties* represented by Stern
23 and Peck as counsel, the defendant*s* may withdraw the answer immediately after the same has been filed and withhold it from publication until answer shall have been filed in said suit brought by said complainants, provided the complainants are supplied with a copy of said answer, and said withdrawal shall in no way interfere with the progress of the suits, but replication shall be made the same as if the answer remained on file.

It is further agreed by complainants that the answer due Aug. 6th may be filed Aug. 16, '83.

Cincinnati, O., Aug. 16, 1883.

STERN & PECK, *Sol'rs for Def't.*
FOLLETT, HYMAN & KELLEY,
Sol'rs for Comp'ts.

And afterwards, to wit, on the 16th day of Aug., A. D. 1883, came the solicitors for the defendant and filed in the clerk's office of said court in this cause the following answer; said answer is clothed in the words and figures following, to wit:

Answer.

In the Circuit Court of the United States for the Southern District of Ohio. In Equity.

FRANK O. BENNET, AMELIA H. BENNET, and HENRY B. BENNET
vs.
A. T. BEEDLE. } No. 3350.

The answer of A. T. Beedle to the bill of complaint of Frank O. Bennet, Amelia H. Bennet, and Henry B. Bennet.

The defendant, reserving to himself all right of objection and exception to any and all matters contained in said bill of complaint, for answer thereto, or to so much thereof as he is advised is material to be answered, says:

First. He denies, upon information and belief, that said Nelson W. Green was the original or first inventor of any new and useful improvement in wells, as alleged in said bill of complaint; denies that said alleged improvement was new or useful; denies that it had not been before known or used; denies that it had not been in public use or on sale for more than two years prior to the alleged application for a patent therefor; and avers, upon information and belief, that the said alleged invention had been in public use and on sale in this country for more than two years before the application of said Green for letters patent thereupon with the knowledge and consent of said Green, and that the same had been abandoned to the public.

Second. He is not informed, except by said bill of complaint, whether letters patent of the United States were issued to said Nelson W. Green, or whether said patent was surrendered
25 and new letters patent for the remainder of the term thereof issued to said Green, as alleged in said bill of complaint, and leaves the complainants to make such proof thereof as they may.

Third. He avers, upon information and belief, that said Green surreptitiously and unjustly applied for and obtained said patent for that which was in fact invented by another, who was using reasonable diligence in adapting and perfecting the same.

Fourth. He denies that the surrender of said original letters patent was, as alleged in said bill, for good and lawful cause; denies that the grant of said reissued letters patent was according to and in conformity with law; denies that said reissued letters patent were for the same invention as the original; denies that there was thereby secured to the said Green or to his heirs or assigns any rights whatsoever; denies that the alleged improvements therein described and claimed involved patentable invention; denies that the said Green was the inventor thereof or of any material part thereof, and avers that said reissue letters patent are void because of delay and laches in applying for said reissue, and because said reissue was not applied for and obtained to correct any accident, inadvertence,
26 or mistake, but for the purpose of claiming other and different inventions than any for which the original was granted, or

was understood and intended to cover, and of embracing therein improvements used and patented in this country by others long prior to the application for said reissue, and which had been abandoned to the public.

Fifth. He avers, upon information and belief, that said reissued patent was fraudulently applied for and obtained for the purpose of covering improvements not described, shown, or claimed in the original letters patent of which it purports to be a reissue, and not contemplated by said Green until long after the grant of said original letters patent, but which had been invented by others and gone into public use prior to the application of said Green for said reissue, and that said reissue was for the purpose of expanding and does expand the claims beyond the scope of the original patent and invention, and is for other and different alleged inventions than any *of* which the original was granted, not omitted therefrom by accident, inadvertence, or mistake, but which had been put into general public use by others long prior to his application for said reissue.

Sixth. He avers, upon information and belief, that said alleged improvements were, prior to the alleged invention thereof by
27 said Green, described and shown in the following-named printed publications and letters patent, to wit:

The Encyclopædia Britan-ica, published in Edinburgh in 1853, p. 681, under the title "Artesian Wells;" the Encyclopædia Metropolitana, published in London in 1845, vol. 25, p. 1183, under the title "Wells;" English Encyclopædia, published in — in —, vol. 1, p. 575, "Arts and Sciences;" Bartlett's Dictionary of Americanisms, published in New York in 1848, p. 343, under the title of "Sucker;" also in the same, published in 1859, under the same title; Travels and Researches in South Africa, by David Livingston, published in New York in 1858 by Harper and Brothers, upon p. 59; Knight's Encyclopædia of the Industries of All Nations, published in London in 1851 by Charles Knight, upon pp. 215, 216, under the title of "Artesian Wells," and upon pp. 409, 410, and 411, under the title of "Boring;" a report of Thomas Spencer, superintendent, and Henry W. Allen concerning the salt wells and the method of sinking wells at Salina and Syracuse, New York, and dated January 9, 1841; also another report, dated January 8, A. D. 1842; also a report of the same, dated January 9, 1843; also a report made by Richard Wright and James M. Allen, of Syracuse, con-
28 cerning the salt wells of Syracuse and Salina, in the State of New York; also a report of the superintendent of the salt wells of Syracuse, State of New York, dated January, A. D. 1853, pages 10 and 11; a certain book or publication known as "McKenzie's Five Thousand Receipts," published by James Kay, Jr., at Philadelphia, A. D. 1827, and being a republication from a London edition of the same work, page 607; "Ure's Dictionary of Arts, Manufactures, and Mines," published in A. D. 1854, pages 87–93 thereof; also in volume 35 of a certain work known as "Ree's Cyclopædia," published in Philadelphia about the year A. D. 1817, by Samuel T. Madford and others, being the first American edition of said work, under the head of "Spring Draining Pump," in said

volume; also in vol. 5 of the above-entitled work, under the head of article of "Borer," in "Rural Economy;" also in volume 5 of the edition of said "Ree's Cyclopædia," published in London, in the year 1819, under the head of "Borer," in "Rural Economy;" also in volume 33 of the same edition of said work, under the head of "Spring Draining Pump;" also in the same edition of said publication, volume 38, under the head of "Well," in "Rural Economy."

That the pages in said volumes are not numbered, but each article is referred to in the alphabetical order of subjects set forth
29 in said volumes, and can be easily found.

That said volumes were originally printed and published in London, England, by Longman and others, Paternoster row, in the year 1813.

A book published in 1860, by authority of the State of New York, entitled "The Transactions of the State Agriculture Society of the State of New York for the year 1859," page 280.

A certain report of Thomas Spencer, of Syracuse, in the State of New York, contained in the annual report of The New York State Agricultural Society for the year A. D. 1843, or 1848, pages 8 and 9.

A certain publication known as the "Traite Sur Les Pintes Artesiens," by T. Garnier, published in 1826, on pages 207 to 209; also pages 139, 149, 159, 198, 199, 200, 210, and 227. In "Degonsie and Laurent's Guide du Sondeur," published at — in the year —, at pages —. In the "Polytechnisches Central Blatt," published in Leipsig, Germany, in the year 1847, pages 89 and following; also in the same publication for the year 1848, page 607 and those following, and in the year 1856, page 885 and following.

In the French periodical magazine called "Moniteur In-
30 dustriel," No. 1208, published in year 1848, page —, etc.

In "Le Genie Industriel," published in March, 1856, pages 122 and following. In "Berg Benu Schule," published in Efest, Germany, in the year 1843, page —. In "Zobard Bulletin du Musee de l'der Industrie," published in France, in 1846, volume 9, pages 224 to 233, inclusive.

In "Schauplatz dor Kunste und der Handwerke," published in the year 1853, volume 124, at page 44 and following.

In "Brande's Dictionary of Art, Science and Manufacture," published at New York, in 1843, pages 91 and 1333.

In the "London Mechanics' Magazine," volume 2, pages 14, 15, 16, and 60, published in 1824; in volume 3, page 109, published in 1825.

Also a certain publication known as the "Journal of Franklin Institute," volumes 1 and 2, third series, pages 29, 30, 31, 32, 33, and 34.

Also in the same publication, volume 7, pages 92 and 127.

Also in the same publication, vol. 11, pages 176 and 177.

Also in the same publication, volume 12, pages 12, 13, and
31 14; also in the same publication, volume 15, published in 1833, in which — an article, "Description, account, and remarks upon a patent or an improvement in the art of raising water from the interior of the earth," etc.

Also same publication, volume 15, third series, published in 1833, at pages 12, 13, 14, 15, 40, 224.

In "Prechtle's Technolosis che Encyclopediè," volume 3, pages 192 to 200, and following pages, published in 1821.

In "London Encyclopædia," volume 22, published 1829, page 593.

In "Journal of National Philosophy, Chemistry, and the Arts," volumes 5 and 6, pages 28 and 29, published in 1862, page 313.

In the "Bulletin of the Museum of Industry," published at Brussels in 1846, volume 9 and 10, pages 224 and those following.

Also in a book entitled "Essai sur Les Moyens d'Elevrt et de Distribuer Les Eaux par M. Genieys," published at Paris in the year 1820, at pages — and following; also in a book published in London before the year 1860 called "Burnell's Well Digging and Pump Work," at pages — and those following.

Also in a book published by Leroy Sunderland in New York city, in the State of New York, in 1842, entitled "A Dictionary of Arts, Manufactures, and Mines," reprinted from the second
32 London edition, at pages 63, 64, 65, 66, 475, 476, 477, 1294, and 1295.

Also in "The Mechanics' Magazine," published in 1824 by Knight and Lacy, London, England, volume 2, page 60, title "Boring Wells;" also in the same publication in the number of March 15, 1824; also in "The Mining Magazine," volume X, from January to June, 1858, on pages 451–454, under the title "Boring," published at No. 1 Spruce street, New York city; also in the same publication, volume 3, pages 109 and following, under date of Sept. 20th, 1824, under the title "Earth Borer."

Also in "Harper's Monthly Magazine," dated Sept, 1851, page 539, under the head of "Bored Wells in East Mississippi."

Also in a publication entitled "A Treatise on the Water-bearing Strata of London and Vicinity, by Prof. Prestwich," London, 1851, at pages —.

Also in volume 35 of said "Ree's Cyclopædia," under the head of article of "Spring Draining" in said volume; also in volume 49 of said work, under the head of article of "Wells" in "Rural Economy;" also volume 1 of plates, plate XXXVII, "Borers," in Fig. 2; also in a book published in London and New York in the
33 year 1854 by George Virtue & Co., called "Cyclopædia of Useful Arts, Mechanics, and Chemical Manufacturing, Mining, and Engineering," on page 68 of volume 1.

Also in a book published in Philadelphia by Isaac Pierce in the year 1816, called "Gregory's Dictionary of Arts and Sciences," under the article "Borer."

Also in a publication written by Henricat De Thury, and published in Paris, France, in A. D. 1829, entitled "Considerations sur la Cause du Jarllissement des Eaux des Puits Fores," Paris, 1829.

Also a publication entitled "Von Bruckman Uber Artesische Brunnen Heib, 1833."

Also in a publication entitled "Notices Scientifiques Annuaire du Bur des Louf Pour Anne Plus," par M. Aroga.

Also in a publication entitled "Les Puits Artesiens des Oasis Me-

ridunales de L'algerie," 12 mo., 1861, by Berbrugger; also in a publication entitled "American Journal of Science and Art," published in the United States in 1859.

Also in a publication entitled "Beardmorn's Manuel of Hydrology."

Also "Notice of Gen. Desvaux," published in Annales de Mines, 1858.

Also in the following publications published in the United
34 States: "Geological Magazine," volume 1, page 31; "Littell's Living Age," volume 3, page 68, and volume 10, page 153; "American Quarterly Review," volume 22, page 339, No. XLIV (Dec.); "Journal of Science," volume 12, page 36.

In letters patent of the United States granted—

P. Easton, February 1, 1810.
E. Hilyard, September 10, 1817.
Tobias Ruffner, Dec. 22, 1818.
Levi Disbrow, March 24, 1825.
W. Morris and J. Spinks, Oct. 22, 1830.
Levi Disbrow, Nov. 30, 1830.
Disbrow and Sullivan, Aug. 28, 1832.
J. Ridgway, July 16, 1842.
L. Disbrow, Oct. 20, 1843.
E. Williams, Aug. 19, 1856, No. 15587.
James Sugget, March 29, 1864, No. 42126.
S. R. and W. S. Hunter, May 16, 1865, No. 47727.
H. R. and M. T. Barnes, Aug. 15, 1865, No. 49362.
Byron Mudge, Oct. 24, 1865, No. 50614.
E. Ashdown and Geo. N. Galpin, Oct. 31, 1865, No. 51382.
R. H. St. John, Nov. 14, 1865, No. 50967.
George D. Pettengill and L. H. Merrick, Nov. 14, 1865, No. 50949.
35 Chas. Houghton and Rob. Lewis, Nov. 21, 1865, No. 51051.
James Suggett, Feb. 6, 1866, No. 52463.
B. J. C. Howe, Feb. 27, 1866, No. 52853.
John Chandler, Sept. 4, 1866, No. 57674.
J. Hutchins, Nov. 13, 1866, No. 59608.
A. J. Edgett, Feb. 5, 1867, No. 61726.

Letters patent of the Dominion of Canada granted R. Lambert, 1865.

Letters patent of Great Britain and Ireland granted James Ryan, Feb. 12, 1805, No. 2822.

Wm. E. Newton, Aug. 24, 1865, No. 2178.
John J. Johnson, Nov. 30, 1865, No. 3074.

Seventh. He avers, upon information and belief, that said alleged improvements were, prior to the alleged invention thereof by said Green, known to and publicly used and sold in the United States by the following-named persons, among others, to wit:

At Portage, in the State of New York, by Vandalia Slater, Robert Scott, John P. Rowell, John Kelly, Nelson Devoe, Abner French, Dr. B. F. Kneeland, Peter Van Allen, Ira Bentley; Albert Dunn, of

Dalton, Livingston Co., N. Y.; John H. Clark, N. Richard,
36 and W. Shave, of Nunda, in said county and State; Charles S. Barnes, R. R. Parks F. Gearheart, A. Smith, A. Chase, Joseph Russell, B. Brigham, Betsey Brigham, W. Toucey, and H. Thompson, of Hunts, in said county and State; P. M. Payne, of Oakland, and John Fitch, of Oakland, in said county and State; H. Miller, James Reese, and M. Wilner, of Portageville, Wyoming county, New York; Addison Pratt, of Brooks' Grove, New York; H. Smith, of Grove, Allegany county, New York; E. Beach, of Birdsall, Allegany county, New York; M. Merrithew, of Swain, New York; Minerva Slater, of Washington, D. C.; John S. Slater, of Washington, D. C.; Gordon Daniels, of Grand Rapids, Mich., and George P. Rowell, of Wichita, Kansas.

At Allegany, Cattaraugus county, New York, by David Soule, Charles Soule, and John Soule, of Port Crescent, Huron county, Michigan; at Angelica, Allegany county, New York, by Mrs. George March, Orman Farr, and Mrs. Joseph H. Rutherford, all of said Angelica; at Caneadea, Allegany county, New York, by R. Minard, of said Caneadea; at sections in which is Cherry Creek, Chautauqua county, New York, by Charles Ballcon, of Waterloo, Black Hawk county, Iowa; at Cuba, New York, by Isaac Mills, of Scio,
37 Allegany county, New York; at Dansville, New York, by Jesse Lord, of Ithaca, New York; at Friendship, Allegany Co., New York, by Samuel E. Spear, Betsey Spear, Edward B. Wingate, Augustus Barker, and Andrew Hoadley, of Friendship, and by Grove Gillet and Alvin Middough, of Scio, Allegany county, New York; at Nile, Allegany county, New York, by Edwin Kellog, of said Nile; at Cortland and Cortlandville, in the State of New York, by James Suggett, Stephen R. Hunter, W. S. Hunter, Julius A. Graham, Henry Bates, Henry Mead, Edward Ashdown, James C. Carmichael, M. M. Waters, Horace Baker, Ebenezer Mudge, Ira V. Hicks, James Freeman, Henry Woodruff, and George N. Copeland, of said Cortlandville; Avery Seaman, Allen B. Smith, Chas. H. Barker, William Winters, M. Mitchelson, Robert Dalton, James A. Calvert, Thos. Ellsworth, H. P. Goodrich, Geo. L. Waters, Patrick Kenedy, Abigail Simons, James Foster, R. B. Smith, Dr. H. A. Bolles, Thos. Allport, and Artemus Reed, of Cortland; Albert L. Rollo, of Vineland, N. J.; Cornelius Brown and Mrs. B. E. Burgess, of Marathon, N. Y.; R. Peck, of Afton, N. Y.; Byron Mudge, of Le Mars, Plymouth county, Iowa; Grove Gates, of Saratoga, Wayne county,
38 Minn., and Richard R. Lambert, of Ann Arbor, Mich., many of whom also knew of such use in towns adjoining said Cortland.

At Dansville, New York, by Geo. G. Wood, Elihu L. Stanley, Lewis E. Lockling, Lucien B. Proctor, Michael Murphy, and Harvey Lord, of said Dansville; in Golo county, California, by R. D. Hubbard, of Mankato, Minnesota; at San Francisco, California, by A. H. Risdon, of Minneapolis, Minnesota; at Birmingham, Connecticut, by E. G. Atwood, of Salem, New York; at New Haven, Conn., by Daniel H. Brown and Albert G. Seymour, of said New Haven; at Norwalk, Connecticut, by A. Homer Byington, of said Norwalk; at

Windsor Locks, Conn., by Stetson S. Gilman and Albert S. Chamberlain, of Springfield, Mass.; at St. Augustine, Florida, by Stephen D. Wait, of New Bedford, Mass.; at Chicago, Ill., by C. Alonzo Meeker, of 13 Congress street, Troy, New York; at the mouth of Calumet creek, near Chicago, Illinois, by John C. Webster, of Minneapolis, Minn.; at Chatsworth, Illinois, and along the line of the Peoria and Oquawka East Extension railroad, in the State of Illinois, by P. Donnely, of Barrow Station, Illinois; at Fairbury, Livingston county, Ill., by Duane A. Tickelpaugh, Minneapolis, Minnesota, Chas. Evers, of Lexington, Illinois, and Stephen Barnes, J. Phillip, R. B. Amesbury, H. M.
39 Gillet, John Zimmerman, and H. Remington, of said Fairbury; at the premises then occupied by one George Burnap, near Hillsborough, Montgomery county, Ill., by Charles Seward, of Farmington, Dakota county, Minn.; at Jerseyville, Ill., by Marcus E. Bagley and William Bellings, deceased, of Jerseyville; at Manlius, Ill., by J. B. Waite, of Marseilles, La Salle county, Ill., and Johnathan Covell, of Brookfield, La Salle county, Ill.; at Manlius, Ill., and in Ruthland, La Salle county, Ill., and adjoining towns by J. H. Edwards, of Stillwater, Washington county, Minnesota, and John Gunn, of Marseilles, La Salle county, Illinois; at the fair grounds in Monmouth, Warren county, Illinois, by Weir, of Mulrane, Sumner county, Kan.; at Napiersville, Dupage county, Ill., by James J. Hunt, Jesse Motand Stenger, Jonas Ball, and A. McN. Ridden, of said Napiersville; at Palestine, Crawford county, Ill., by William R. Alexander, of Quincy, Ill., and Thomas C. Alexander, of said Palestine; at Piper City (formerly Brenton), Ill., by John R. Lewis, of said Piper City, and Michael Fitzmorris, of Chatsworth, Ill., and —— Micherson and —— Atwood, of said Piper City; at Seepertown, Bureau county, Illinois, by A. S. Dodge, of Waco, Ledwick Co., Kansas; at Center Square, Switzerland Co., Indiana, by J. W. Sturns and —— Sturns, of Wichita, Sedgwick county, Kansas; at Columbus, Indiana, by the Hon. William Carter, of Belle Plain, Sumner Co., Kansas;
40 at Elkhart, Elkhart county, Indiana, by William Brooks and F. B. Pratt, of said Elkhart, and H. R. Butler, of Wichita, Sedgwick county, Kansas; at Fort Wayne, Indiana, by Alfred Hatterby, of said Fort Wayne; at La Porte, Indiana, by L. D. Webber, of said La Porte; at Indianapolis, Marion county, Indiana, and elsewhere, by James E. Collins, of St. Louis, Missouri; at Jacksonville, Switzerland county, Indiana, by H. W. Stowe, of said Jacksonville; at Prophetstown, Whiteside county, Indiana, by Edward Forward, of Wichita, Sedgwick county, Kansas; at Richmond, Indiana, by William Sharon, of said Richmond; at Independence, Iowa, by Charles T. Campbell, C. T. Kimball, and John Gauior, of Jessup, Buchanan county, Iowa; Byron C. Hale, of Quasqueton, Buchanan county, Iowa; Elias S. Hovey, of Swanton, Iowa; William Coddling, of Fairbank, Iowa; S. W. Fenstermaker, J. E. Traxeler, and M. Russ, of Waterloo, Iowa; Thomas H. Tyson, Thomas J. Marinus, Dr. George Warne, Samuel P. McEwen, Thomas Sherwood, Frank Trask, Perry Munson, D. S. Deering, S. S. Allen, A. T. Williams, S. M. Marquette,

George B. Warne, A. S. Francis, M B. Zims, Oliver Marquette, W. Hill, H. A. King, W. H. H. Moore, C. B. Handy, George Hovey, J. J. Travis, J. M. King, W. Wallace, A. H. Fonda, John A. Davis, and E. W. Purdy, of Independence, Iowa.

41 At Jackson county, Iowa, by William A. Clark, of Minneapolis, Minnesota, at what is now Emporia, Lyon county, Kansas; Manhattan, Riley county, Kansas; Medina and Perry, Jefferson county, Kansas, by Charles C. Linnville, of Decorah, Iowa; at Lawrence, Kansas, and also in the Arkansas valley, in the State of Kansas, by Hugh Cameron, of Wakamsa township, Douglas county, Kansas; at ——, county of ——, State of Kansas, by Perry Eaton, of El Paso, Sedgwick county, Kansas; at Kennebunk, York county, Maine, by J. D. Underwood, of Minneapolis, Minnesota; at East Dennis, Massachusetts, by Prince Crowell and Mrs. Prince Crowell, of said East Dennis; at Lanesborough, Massachusetts, by Hamilton Perry, of Milton, Saratoga county, N. York; at Dalton, Pittsfield, Springfield, Boston, and South Hadley, in the State of Massachusetts, and in various other places in the United States and Canada, by Stetson S. Gilman, of Springfield, Massachusetts; at Martha's Vineyard, Dukes county, Massachusetts, New Bedford, Massachusetts, and Hyde Park, Massachusetts, by Stephen D. Waite, of New Bedford; Terry Witt, Daniel McElraine, and Ivey Witt, of said North Adams; at Palmer, Massachusetts, by Henry B. Stebbins, of Boston, Mass.; at Cold Water, Branch county, Mich., by John Chandler, of said Cold Water, and H. H. Peckham, of Wichita, Sedgwick county, Kansas; at Comstock, Kalamazoo county, Mich., by J. W. Keith, of Delno, Sedgwick Co., Kansas; at Pokagon, Cass Co., Mich., by P. Wilkin and G. W. Benton, both of Wichita, Sedgwick county, Kansas; at Salem,

42 Washtenaw county, Mich., by A. H. Risdon, of Minneapolis, Minnesota; at Schoolcraft, Kalamazoo county, Michigan, by A. J. Barnhurt, of Independence, Iowa; at Webster, Washtenaw county, Mich., by Mr. Warren, of said Webster and Solomon Bignall, of Chicago, Ill.; at Anoka, Anoka county, Minn., by C. D. Harn, of Janesville, Waseca county, Minnesota, and C. R. Bushnell, of Minneapolis, Minnesota; at section six, township one hundred and seven, range sixteen, Dodge Co., Minn., by William H. Brown, of Swan Lake City, Emmett Co., Iowa; at St. Anthony, Minn., by William Dixon, Isaac P. Reeves, and John G. Gluck, all of Minneapolis, Minn.; at Winona, Minnesota, by Peter L. Mallory and Frances G. Siemers (now deceased), of Winona, Minnesota; Louise Siemers, Charles Neidenhofer, Hans Luthye, Samuel D. Van Gorder, Alexander Baldwin, and Joel Mallory, all of said Winona; at Montgomery City, Missouri, by J. M. Griffith, of Minneapolis, Minn.; at St. Louis, Missouri, by James E. Collins, of said St. Louis; at Manchester, New Hampshire, by Hiram Dow, of North Topeka, Kansas; at Wauconda, Lake county, Ill.; at The Crosses, near said Wauconda; at Beloit and Janesville, Wisconsin; at Albany, New York; at the State Fair Grounds, called Bull's Head, near said Albany; at Beech's Woods, not far from Buffalo, New York; at Greenbush, New York; at Willis Mills, Erie county, New York, by E. Kirwan,

43 of Greenbush, New York; at Greenbush, New York, by —— Staats and —— Baldwin, of said Greenbush; at Afton, Chenango county, New York, by Reed Peck, of said Afton; at Alabama Center, Genesee county, New York, by William A. Clark, of Minneapolis, Minnesota; at Albany, New York, by George Malory, of Herkimer, New York, by C. C. Chapman and Samuel Cottrell, of Hoosick, New York; J. Chapman, Alfred Seaman, Richard Spicer, and Elisha Waters, of Lansingburgh, New York; Anson Atwood, of Dunellen, New *York;* Alexander Gregory, of said Albany, and Horace L. Emery, of Cleveland, Ohio; at Brooklyn, New York, by George Sheppard, of said Brooklyn; at Buffalo, New York, by J. A. Mills, Frederick P. Stevens, and —— Stevens, brother of said Frederick, all of Chatham, New York; in Chemung county, New York, by John Selour, of Elmira, New York; at Constableville, Lewis county, New York, by —— Donnely, of Minneapolis, Minn.; at Greene, Chenango county, New York, by Silas Smiberker, of Norwich, in said county, George Benton, and Elijah Rathborne, of said Greene; at Delhi and Walton, New York, by William Youman, of said Delhi; at Dryden, Tomkins county, New York, by Byron Mudge, of Le Mars, Plymouth county, Iowa; at Elmira, New York, by
44 Matthew McKinney, John J. Wicks and Levi Averill, of said Elmira, and O. W. Whitney, of Minneapolis, Minn.; at Fort Edward, Sandy Hill, and Waterford, New York, by George Mallory, of Herkimer county, New York; at Green Island, Albany county, New York, by said George Mallory and by Thomas White and Charles Stevens, of Troy, New York, and John Garnett, of said Green Island; at Herkimer, New York, by Henry Bellinger, F. P. Bellinger, Russell Perkins, and James Clark, of said Herkimer, and Byron Leffin, of Pittsfield, Massachusetts; at Homer, New York, by L. Van Anden, of Mantorville, Dodge county, Minnesota, and George Barrett, of Lisle, Broome county, New York; at Hoosick, New York, by Dyer P. Mosher and Henry Eddie, of said Hoosick; at Ithaca, New York, by Joseph C. Burritt, James Reynolds, E. B. Cornell, Jessie Lord, L. V. Maurice, B. Oltz, E. Van Kirk, and J. P. Van Kirk, of said Ithaca; Isaac Pelham, of Elmira, New York, and John T. Mead, of Stockridge, New York; at Ithaca, Salina, Syracuse, and elsewhere in the State of New York, by Samuel J. Parker, of said Ithaca; at Lansingburgh, N. York, by Daniel P. Cheesebrough, of said Lansinburgh; John M. Mott, of Chicago, Ill., and Hamilton Perry, of Milton,
45 Saratoga county, New York; at Lisle, Broome county, New York, by James Snook, of Binghampton, New York; at Macedon, Wayne county, New York, by J. O. Milne, of Minneapolis, Minn.; at Mechanicsville, New York, by Benjamin Badgely, of said town, and John Haner, of Green Island, New York; at Middlefield, New York, by James Haney, of said Middlefield, and Norman Perkins, of Toddsville, New York; at Middletown, Orange county, New York, by A. Homer Byington, Norwalk, Conn.; at Minden, Montgomery county, New York, by a Maxfield, Jacob J. Morgan, Enoch Lushley, and Jacob Burnstead, of said Minden, and Cornelius Maxfield, of Herkimer, New York; at Norwich, N. Y., by Stephen L. Avery, Ira Spaulding, Harry F. Hickok, Denniss Conway, B. Gage

Berry, John P. Smith, James Gallaher, Isaac Evans, Samuel R. Perlee, Samuel Cole, Smith Steere, Jr., Cornelius Conway, Josiah Wood, Patrick Henry, Andrew J. Hunt, Augustus Whetmore, Shubael A. Brooks, and Martin P. Voosburg, all of said Norwich; at New York city, by William Sherwood, of said city; at the outlet of Onondaga Lake, New Yory, by Peter L. Mallory, late of Winona, Minnesota; at Oswego, New York, by John B. Yost, John J. Hooker, Mortimer Searles, Aaron Steele, Asa Camp, and Stephen C. Burr, of said Oswego.

46 At Preble, Courtland Co., N. Y., by William E. Tallman, now deceased; Moses C. Tallman, Mrs. Moses C. Tallman, Abram Nandenburg, Theron Klock, Thomas J. Getman, John Wilber, Edwin Wilber, Charles White, George Taylor, Calvin Shepard, John D. F. Woolston, De Witt C. C. Allen, and John Hilligus, of said Preble; Hiram D. Meeks, J. F. Wheeler, D. O. Crofoot, Rob't Corwin, P. S. Haynes, R. Egbertson, R. H. Duell, of Courtland, N. Y.; Mrs. E. Short, of Homer, N. Y.; C. H. Haynes, of Spofford, N. Y.; Dix Hobert, of Virgil, N. Y.; Byran Mudge, of Le Mars, N. Y., near La Fayette, Indiana, by Johnathan Luford, of German, Darke Co., Ohio; Henry C. Tallman, of Tully, Onondaga, county, N. Y.; James Wickham and George Wickham, of Dryden, Tompkins county, New York; Edward Hall and Esther Hall, of Beaver Dam, Wisconsin; Hezekiah Klock, residing near Washington, D. C.; James Ready, of Spofford, Onondaga county, New York; John Earl, of Palmyra, *of* Wayne county, N. York, and Ezra Hilligus, of Cortlandville; at Raymond, Black Hawk county, Iowa, by A. Butterfield, of said Raymond; at Waterloo, Iowa, by Thomas Dobson, George Leland, of said Waterloo; at Courtland Village, N. Y., by Lucien Dexter, Levitt G. Garrison, A. Reed, James Suggett, and Henry Woodruff, of said Courtland Village; at Rochester, New York and

47 elsewhere by B. F. Corson, of Glencoe, Minn., and Charles Batchelder, of Keene, New Hampshire; at Salem, New York, by Walter Frazier, John Frazier, Dudley Oatman, James E. McDonald, William Boyd, James McNaughton, John McNaughton, William McMorris, Eli Wilson, Barnard Blain, and A. C. Lansing, of Salem, Washington county, New York; William Wood, of North Adams, Massachusetts; H. H. Ingolsby, of Hartford, New York; Anson Atwood, of Dunellen, Middlesex county, New Jersey; George Mallory, of Herkimer, N. Y.; Albert Brimager, of Shushan, New York; Timothy Cronin, residing at 167 Broadway, New York city; Zera Rider, Jr., of Cambridge, New York; at Salina, New York, by George Geddes and Thos. Spencer, of Syracuse, N. Y., and Stephen D. Newton, of said Salina; at Saratoga, New York, by James M. Andrews, Seymour Gilbert, Joshua F. Blanchard, Daniel Snyder, John R. McGregor, R. C. Cronkite, F. D. Curtis, and Wm. M. Dearing, of said Saratoga; George Mallory, of Herkimer, New York; James S. McDonald, of Salem, New York, and Z. Meeker and John Grimes, of Farmington, Minn.; at Syracuse, N. Y., by Stephen D. Newton, David H. Smith, George Geddes, and Thomas Spencer, of said Syracuse; at the Columbia House on the Syracuse road, in Madison county, New York, by F. Morgan, of Howard Lake, Minn.;

48 at Troy, Lansinburgh, and Green Island, N. Y., by John G. Barthell.

At Victor Flats, Ontario county, New York, by George Parish and Mr. Richards, of Chatham, Buchanan county, Iowa; at Warsaw, Wyoming county, New York, by C. F. Bartlett, Chancery Buxton, Timothy H. Buxton, Hiram Adams, Alanson Burr, Jacob B. Warren and Spencer Cronkhite, all of said Warsaw; at Waterford, N. Y., by William H. Fox, Joseph Steenbergh, L. C. Steenbergh, Mrs. Amy Steenbergh, Henry Steenbergh, (deceased), Henry Steenbergh, Jr., George Steenbergh, William H. Humphrey, Lewis Wells, Elijah B. Housinger, William Hamilton, David Gregg, David T. Lamb, Joseph Campbell, Mrs. Eliza Jones, Joseph P. Ennis, James P. Vosbergh, John Brott, Isaac Bedell, Chas. McKallar, Henry C. Van Denbergh, Robert Walden, and Mr. Grant, of Grant and Knight, all of said Waterford; Joseph Brott, of 105 Fulton St. Brooklyn, New York, and J. Dargen, of Lansingburgh, New York; at Pleasant Township, Franklyn Co., Ohio, by Frank Tipton, of Wichita, Sedgwick Co., Kansas; at Sandusky and Toledo, Ohio, by Levi Averill, of Elmira, New York; at Warren county, Ohio, by H. W. Smith, Pontiac, Illinois; at Brady's Bend, Armstrong county, Penn., by H. A. Scandrett, of Fairbault, Minn.; at Danville, Montour Co., Pennsylvania, by A. B. Evans, of Rochester, Min-
49 nesota; at Harbor Creek, Erie county, Pennsylvania, by Frank Goodman, of Minneapolis, Minn.; at Monmouth, Bradford Co., Penn., by G. J. Verbeck, of St. Paul, Minnesota; at Pithole, Venango county, Penn., by Peter L. Mallory (now deceased), of Winona, Minnesota; at Titusville, Pennsylvania, by Stephen D. Waite, of New Bedford, Massachusetts; at Warren, Pennsylvania, by D. S. McNett, of said Warren; at Providence, Rhode Island, by Stetson S. Gilman, of Springfield, Mass.; in the State of Rhode Island by Joseph Richardson, of Glencoe, Minnesota; at Bennington, Vermont, by Stetson S. Gillman, of Springfield, Massachusetts; at Middlesex, Vermont, by B. F. Perry, of Minneapolis, Minnesota, and Mr. Barnes, of Montpelier, Vermont; at Montpelier, Vermont, by Nathan L. Heath, of Brainerd, Minnesota; at Newbury, Vermont, by William D. Babcock, of Hartford, Conn.; at Stowe, Vermont, by H. D. Wood, of Minneapolis, Minnesota, and Randolph Washburne and Perry Stowe, of said Stowe; at Beloit, Wisconsin, by J. W. Bullock, of Clinton, Douglas county, Kansas; at Brodhead, Green county, Wisconsin, by William Smith, of Hazelton, Buchanan county, Iowa; at Darlington, La Fayette county, Wisconsin, by E. J. Russell, of Hutchinson, Reno county, Kansas; at Milwaukee, Wisconsin, by E. W. Purdy, of Independence, Iowa, and A. J. Lackey, of De Soto, Jefferson county, Missouri; at Wautoma, Waushara county, Wisconsin, by C. D. Belden, of Austin, Minn.;
50 at Wauwatosa, Milwaukee county, Wisconsin, by Thomas Graham and Allen Yates, of Decorah, Winneshiek county, Iowa, and E. B. Walcott, of Milwaukee, Wisconsin.

At Canterbury, England, and elsewhere, by George Sheppard, of Brooklyn, New York; in Netherlands, by B. J. Wardenburg, of Minneapolis, Minnesota.

Eighth. He avers, upon information and belief, that said alleged improvements were, for more than two years prior to the application of said Green for letters patent thereon, known to and publicly used and sold, with the knowledge and consent of said Green, by the following-named persons, among others, to wit, Nelson W. Green, of Amherst, Mass.; Byron Mudge, of La Mars, Plymouth Co., Iowa; Col. A. J. McNett, of Belmont, N. Y.; John Fisher, of Friendship, N. Y.; E. D. Van Slyck, of Hamilton, Madison Co., N. Y.; J. C. Carmichael, of Cortland, N. Y.; Hemin S. Robinson, of ——; Henry Woodruff, Henry Bates, Isaac M. Seaman, George N. Copeland, Charles H. Parker, William W. Winters, De Puy Mallerory, George T. Holmes, L. D. Garrison, J. J. Haben, Emilus Gurley, Ira V. Hicks, Ebenezer Mudge, Julius A. Graham, John S. Sampson, Avery J. Seaman, H. F. Shurley, Lucien Dexter, James O. Foster, Artemus Reed, Allen B. Smith, and Dr. H. A. Bolles, of Cortland, New York, and by those persons whose names and residences are set up
51 in the preceding section of this answer.

Ninth. He is not informed, save by said bill of complaint, whether the said Nelson W. Green did, at the time or times alleged in said bill of complaint, or at any other time, by instrument in writing or otherwise, assign unto the complainants' all his rights, title, and interest in and to, or any rights, title, or interest in and to, said alleged invention and letters patent for the territory specified in said bill of complaint, or any territory whatsoever, or whether the said complainants' have ever acquired the sole, or any right, title, or interest for the said territory, or any territory whatsoever, in or under said alleged invention and letters patent, and therefore denies the same.

Tenth. He denies, upon information and belief, that the complainants' have invested large sums of money, or have been to great trouble in and about said invention, or for the purpose of carrying on the business of constructing wells or using the same, or making the same profitable to themselves or useful to the public; denies that said invention has been or is of any benefit or advantage whatsoever; denies that wells were ever constructed according to
52 said alleged invention, or sold by the complainants' herein; denies that the public have acknowledged or acquiesced in the alleged rights of complainants', and avers, upon like information and belief, that said alleged invention was publicly, notoriously, and extensively used and sold in various parts of the United States prior to the alleged invention thereof by said Green.

Eleventh. He avers that he is not engaged, never has been engaged, and does not intend to engage, in sinking wells by the process set forth in complainants' patent; that complainants' method of obtaining profit under their said patent is, and long has been, by exacting a license fee for wells claimed to embody their alleged invention; that they have a plain and adequate remedy at law for the cause of action set forth in their bill of complaint; that no ground for the intervention of a court of equity is shown, and that the court has no jurisdiction herein.

Twelfth. As to the several suits against other parties, recited in said bill of complaint, he has no specific information and leaves complainants to make such proof thereof as they may be able, denying, however, that he is affected thereby, and that the defences available against said patent were fully exhibited or passed upon in either of said suits, and aver-ing, upon information and belief, that there was no *bona fide* contest in any of said suits, and that
53 the proceedings therein were procured by collusion and fraud.

Thirteenth. The defendant avers that in a cause pending in the United States circuit court for the southern district of Iowa, wherein Wm. D. Andrews *et al.* were complainants and George Hovey was defendant, wherein the said letters patent were alleged by the complainants to be infringed by the defendant, and an injunction and damages prayed a large amount of evidence having been taken in said cause and arguments of counsel heard by the court, the court found that said letters patent were invalid and void, as will more fully appear by a certified copy of the decree and opinion of the court, which the defendant is here ready to produce in court.

Fourteenth. He denies that he has infringed or is infringing said reissued patent or any part thereof, or has used or is using or intending to use the alleged patented invention or any material part thereof, or has made or realized any profit or advantage therefrom, or has in any way violated the rights of the complainants therein.

Fifteenth. Further answering, defendant insists that com-
54 plainants are not entitled to the relief prayed or in their said bill of complaint, without this, that there is any other matter, cause, or thing in the said bill of complaint contained material or necessary for this defendant to make answer unto and not hereinbefore sufficiently answered, confessed, and avoided, traversed, or denied, is true; all of which matters and things defendant is ready to aver; maintain, and prove as this honorable court may direct, and prays to be hence dismissed with his costs in this behalf sustained.

A. T. BEEDLE.

STERN AND PECK,
Of Counsel and Solicitors for Def't.

STATE OF OHIO, }
County of Miami, } *ss:*

This — day of —, A. D. 1883, before me personally appeared A. T. Beedle, the above-named defendant, who, being by me duly sworn, deposes and says that he has read the foregoing answer by him subscribed and knows the contents thereof, and that the same is true to the best of his knowledge, information, and belief.

55 And afterwards, to wit, on the 3rd day of Sept., A. D. 1883, came the sol'rs for complainants and filed in the clerk's office of said court the following replication, clothed in the words and figures following, to wit:

Replication.

In the Circuit Court of the United States for the Western Division, Southern District of Ohio. In Equity.

FRANK O. BENNET, AMELIA H. BENNET, and HENRY B. BENNET
vs.
A. T. BEEDLE.
No. 3350.

The replication of the above-named complainants to the answer of A. T. Beedle, defendant.

These repliants, saving and reserving to themselves, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto, say that they will aver, maintain, and prove this bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insu-ficient to be replied unto by these repliants, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and
56 hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver, maintain, and prove as this honorable court shall direct, — said bill they have already prayed.

Sept. 3rd, 1883.

FALLETT, HYMAN AND KELLEY,
Sol'rs for Complainants, of Counsel.

And afterwards, to wit, on the 19th. day of April, A. D. 1886, the following exhibits were filed in the clerk's office of said court, clothed in the words and figures following, to wit:

EXHIBITS.

(Here follows diagram marked p. 57.)

58 UNITED STATES PATENT OFFICE.

NELSON W. GREEN, of Cortland, New York.

Improved Method of Constructing Artesian Wells.

Specification forming part of Letters Patent No. 73425, dated January 14, 1868.

To all whom it may concern:

Be it known that I, Nelson W. Green, of Cortland, in the county of Cortland and State of New York, have invented a new and use-

57

N. W. GREEN.

Constructing Artesian Wells.

No. 73,425. Patented Jan'y 14, 1868.

No. 1320.
Beadle
v
Bennett
et al
p. 57

Fig. 1.

Fig. 2.

Witnesses:
A. B. Stoughton
Jos Pecke

Inventor.
N. W. Green

ful improvement in the manner of sinking and constructing artesian driven wells where no rock is to be penetrated, and of raising water water therefrom; and I do hereby declare the following to be a full, clear, and exact description of the same, reference being had to the accompanying drawings, making a part of this specification, in which—

Figure 1 represents a portion of the rod which is driven or forced into the ground to form the opening or hole for the insertion of the tube that forms the casing or lining of the well and the avenue through which the water is raised to or above the surface of the ground, and Fig. 2 represents a portion of the tube.

My invention consists in driving or forcing an iron or a wooden rod with a steel or iron point into the earth until it is projected to or into the water, and then withdrawing the said rod and inserting in its place a tube of metal or wood to the same depth, through which and from which the water may be drawn by any of the usual well-known forms or pumps.

To enable others skilled in the art to make and use my invention I will proceed to describe the same with reference to the drawings.

The driving-rod A, I construct of wood or iron or other metal, or of parts of each, with a sharp point, *b*, of steel, or otherwise, to penetrate the earth, and a slight swell, *a*, a short distance above the point, to make the hole slightly larger than the general diameter of the rod. This rod I drive by a falling weight or other power into the earth until its point passes sufficiently far into the water to procure the desired supply. I then withdraw the rod and insert in its place the iron or wooden tube B, which may be slightly contracted at its lower end to insure its easy passage to its place. In general, this tube, B, I make of iron, and of a thickness that will bear a force applied at its upper extremity sufficient to drive or force it to its place, and where a large or continuous flow of water is desired I perforate this lower end of the tube to admit the water more freely to the inside.

The perforations *e* may be about one-half of an inch in diameter (less or more), and from one to one and a half inch apart, and the perforations may extend from the bottom of the tube upward from one to two feet. The diameter of the tube should be somewhat smaller than the diameter of the swell *a* on the drill end of the driving-rod A.

In localities where the water is near the surface of the ground, and the well is for a temporary use only, as in the case of a moving army or for temporary camps, lighter or thinner material than iron may be used for making the tubes—as, for instance, zinc, tin, copper, or sheet metal of other kind, or even wood may be used. The rod may be of any suitable and practical size that can be readily driven or forced into the ground, and may be from one to three inches in diameter.

Any suitable well-known pump may be applied to raise the water up through the tube to the surface or above it.

I am aware of James Suggett's patent of March 29, 1864, and I disclaim all secured to him therein.

Having thus fully described my invention, what I claim and desire to secure by letters patent is—

The herein-described process of sinking wells where no rock is to be penetrated, viz., by driving or forcing down a rod to and into the water underground and withdrawing it and inserting a tube in its place to draw the water through, substantially as herein described.

N. W. GREEN.

Witnesses:
A. B. STOUGHTON.
JOS. PECK.

(Here follows diagram marked p. 59.)

60 UNITED STATES PATENT OFFICE.

NELSON W. GREEN, of Amherst, Massachusetts.

Improvement in Methods of Constructing Artesian Wells.

Specification forming part of Letters Patent No. 73425, dated January 14, 1868; reissue No. 4372, dated May 9, 1871.

To all whom it may concern:

Be it known that I, Nelson W. Green, of Amherst, in the county of Hampshire and State of Massachusetts, have invented a new and improved method of constructing artesian wells; and I do hereby declare that the following is a full, clear, and exact description of the same, reference being had to the accompanying drawings, forming part of this specification.

My invention is particularly intended for the construction of artesian wells in places where no rock is to be penetrated.

The methods of constructing wells previous to this invention were what have been known as "sinking" and "boring," in both of which the hole or opening constituting the well was produced by taking away a portion of the earth or rock through which it was made.

This invention consists in producing the well by driving or forcing down an instrument into the ground until it reaches the water, the hole or opening being thus made by a mere displacement of the earth, which is packed around the instrument and not removed upward from the hole, as it is in boring.

The instrument to be employed in producing such a well, which; to distinguish it from "sunk" or "bored" wells, may be termed a "driven" well, may be any that is capable of sustaining the blows or pressure necessary to drive it into the earth; but I prefer to employ a pointed rod, which, after having driven or forced down until it reaches the water, I withdraw and replace by a tube made air-tight throughout its length, except at or near its lower end, where I make openings or perforations for the admission of water, and through and from which the water may be drawn by any well-known or suitable form of pump.

N. W. GREEN.

Method of Constructing Artesian Wells.

No. 4,372. Reissued May 9, 1871.

No 1320.
Bridle
v
Bennett
et al
p. 59

Fig. 1

Fig. 2

Witnesses:
Fred Haynes
Orlando Barnes

Inventor
N. W. Green

In certain soils the use of a rod preparatory to the insertion of a tube is unnecessary, as the tube itself through which the water is to be drawn may be the instrument which produces the well by the act of driving it into the ground to the requisite depth.

To enable others to make and use my invention, I will proceed to describe it with reference to the drawings, in which—

Figure 1 represents a portion of the pointed rod above mentioned, and Fig. 2 a portion of the tube which forms the casing or lining of the well.

The driving-rod A, I construct of wood or iron or other metal, or of parts of each, with a sharp point, *b*, of steel, or otherwise, to penetrate the earth, and a slight swell, *a*, a short distance above the point, to make the hole slightly larger than the general diameter of the rod. This rod I drive by a falling weight or other power into the earth until its point passes sufficiently far into the water to procure the desired supply. I then withdraw the rod and insert in its place the air-tight iron or wooden tube B, which may be slightly contracted at its lower end to insure its easy passage to its place. In general this tube B I make of iron and of a thickness that will bear a force applied at its upper extremity sufficient to drive or force it to its place, and where a large or continuous flow of water is desired I perforate this tube near its lower end to admit the water more freely to the inside.

The perforations *c* may be about one-half of an inch in diameter, less or more, and from one to one and a half inch apart, and the perforations may extend from the bottom of the tube upward from one to two feet. The diameter of the tube should be somewhat smaller than the diameter of the swell *a* on the drill end of the driving-rod A.

In localities where the water is near the surface of the ground and the well is for temporary use only, as in the case of a moving army or for temporary camps, lighter and thinner materials than iron may be used for making the tubes—as, for instance, zinc, tin, copper, or sheet metal of other kind, or even wood, may be used.

The rod may be of any suitable and practical size that can be readily driven or forced into the ground, and may be from one to three inches in diameter.

61 In some cases the water will flow out from the top of the tube without the aid of a pump. In other cases the aid of a pump to draw the water from the well may be necessary.

In the latter cases I attach to the tube, by an air-tight connection, any known form of pump.

What I claim as my invention, and desire to secure by letters patent, is—

The process of constructing wells by driving or forcing an instrument into the ground until it is projected into the water without removing the earth upward, as it is in boring, substantially as herein described.

N. W. GREEN.

Witnesses:
SIDNEY E. SMITH,
W. MORRIS SMITH.

62 And afterwards, to wit, on the 19th day of Apr., A. D. 1886, the following "agreed statements of facts" was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Agreed Statements of Facts.

United States Circuit Court, Southern District of Ohio, Western Division. In Equity.

FRANK O. BENNET *et al.*
vs.
A. T. BEEDLE *et al.* } No. 3350.

Stipulation.

For the purpose of saving the expense of taking testimony it is hereby agreed by and between the parties hereto that the above cause and the others hereinafter referred to may be tried upon
63 the following agreed statement of facts, said statement to be accepted as proof of the facts recited as fully and completely as if the same had been duly and formerly proven.

It is agreed that Nelson W. Green was the patentee of a new and valuable process in the construction of wells, and claimed to be its first and original inventor, for which process he received original letters patent of the U. S., № 73425, on the 14th day of January, 1868, and for which reissue letters patent No. 4372 were granted to Nelson W. Green on May 9th, 1871, the application for which having been filed February 24th, 1871.

That the title to the letters patent sued on for the State of Ohio is in the complainants.

That the defendants have had in use on their farm for the past seven or eight years one or more driven wells, which wells were put down for the defendants by an ordinary well-driver in the following manner: A tube, of which the lower portion was perforated with small holes and the lower end provided with a point, was driven into the ground until it projected into the water without removing the earth upwards, as in boring.

The water then entered the tube through the perforations
64 and was pumped up through the tube by an ordinary pump.

That the defendants have never driven wells for themselves except as above described or for other purposes; never have sold or offered for sale driven wells or the materials for driving them, but have simply used their own wells for their personal use on their farms.

It is agreed that printed copies of the original and reissued letters patent granted to N. W. Green in 1868 and 1871, Nos. 73425 and 4372, respectively, may be offered in evidence at the hearing, and may be accepted as proof with the same force and effect as if formally proven.

That the said N. W. Green made his alleged invention or discovery as early as 1861, when he put down on his own grounds, at Cortland, New York, the first driven well for the purpose of demonstrating his discovery.

That he, at the time of his alleged invention, claimed to have made a valuable discovery and to have invented a new process.

That he then declared an intention to secure his process by letters patent and express- his belief that large profits would accrue therefrom.

That he at that time, having been partly educated at West
65 Point, was engaged in organizing a regiment at Cortland, N. Y., his residence, and was expecting soon to take part in the war of the rebellion.

That in June, 1861, he put down a well at his house in Cortland, and in October, 1861, he publicly drove a well, in the manner described in his original patent, at the fair grounds near Courtland for the use of the soldiers in camp, and demonstrated to his own complete satisfaction its success.

That he gave orders and directions for the construction of proper apparatus for driving such wells, and made arrangements for its transportation with his regiment as it was moved to the seat of war.

That on the 6th of December, 1861, while in discharge of what seemed to be his duty, he felt compelled to shoot one of the captains of his regiment named McNett; that the shot was not mortal, but inflicted serious injury; that in the then state of the public mind this occasion gave rise to intense public excitement, of which sprang a controversy of extraordinary bitterness, involving numerous persons and continuing for several years; that the effect upon Green
was disastrous in the extreme; that he was suspended from
66 his command, then tried by a court of inquiry at Albany, and reinstated in command; that his regiment after having, it is said, required the protection of a battery to save it from violence at the hands of evil-disposed people of the country, removed to Washington, where Green was relieved from command, and then dismissed the service, and subjected to military charges.

That he was, in addition, harassed by civil suits brought to charge him with a personal liability for articles used by his regiment.

That he was also arrested and then indicted for the shooting of McNett, and after repeated postponements of the trial, effected because of the excited state of the public mind, was tried in 1866, and the jury, having disagreed, was discharged.

That during this period he also became involved in church difficulties arising out of the shooting of McNett; was expelled from the church and compelled to appeal to the bishop, and also became involved in litigation with the pastor of his church.

That his efforts during this period to secure a reversal of the order dismissing him from the service were constant and absorbing
and were attended with such anxiety of mind as to give rise
67 to the charge that he was insane.

That this state of things continued up to 1866, during which period he was of necessity often absent from Cortland, at Albany and at Washington, and that he was compelled to devote his entire time to the controversy in which he had become involved, abandoning all other occupation and exhausting all his means.

That in November, 1865, when Green saw, by an advertisement in the papers, that driven wells were being put down, although he was advised by counsel defending him on the indictment for the shooting of McNett not to apply for a patent, as he would thereby increase the number of his enemies and prejudice him on the trial of the indictment, then about to come —, *or* nevertheless did then, and in opposition to the advice of his counsel, file his application and assert his right to the invention.

That the said Green, during this period aforesaid, never declared any intention of abandoning his said discovery and invention, and that, having so made his application as aforesaid, original letters patent were granted the said N. W. Green January 14, 1868.

It is further agreed that whatever order or decree is made
68 in this cause the same shall be made in all the cases pending in this court in which the same parties are complainants, a list of which cases, with the title and number thereof, is hereto attached and made a part of this stipulation.

It is further admitted that the complainants' price for sett-ing for infringement under the above patent without suit has been ten dollars per well and the recognition of complainants' rights, and that the complainants offered to settle on such terms with these defendants before bringing suit, which offer was refused.

April 12, 1886.

FALLETT, HYMAN AND KELLEY,
Sol'rs for Complainants.
STERN & PECK, *Sol'rs for Def'ts.*

And afterwards, to wit, on the 6th day of Dec., A. D. 1886, the following opinion was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Opinion.

United States Circuit Court, Southern District of Ohio, Western Division.

69 FRANK O. BENNET *et al. vs.* A. T. BEEDLE AND CO.

This is one of a series of causes brought for infringement of letters patent No. 4372, known as the "Driven Wells Patents."

The defenses are—

1st. That this court has no jurisdiction, for the reason that the complainants have a complete and adequate remedy at law.

Under this head respondents' counsel in their brief say that the bill was filed in May, 1884, and that the patent expired January 15, 1885, and refer to the case of Gottfried *vs.* Engert, unreported, but decided by Judge Baxter, who held that a bill filed for an injunction and account six months and 15 days before the expiration of the patent must be dismissed for want of jurisdiction, as the complainants were not entitled to an injunction at such a time and must be left to their remedy in damages. Counsel state also that this rule was

followed, though the time was not quite so long, in the case of Davis *vs.* Mast, and afterwards, in the district of Indiana, in the case of Davis *vs.* Rude *et al.* These cases were probably decided, not upon a time rule, for which there is neither reason nor precedent,
70 but upon the facts peculiar to each. The protection of the patent laws is for the full term of the patent. It is well that there may be cases in which the court may, "according to the course and principles of courts of equity," dismiss a bill filed for an injunction and account shortly before the expiration of the patent, for the reason that it is apparent that the legal remedy is ample and complete; but it is quite as true that there may be cases in which an injunction, even during the last three months of the patent, may be necessary to prevent irreparable injury to the complainant. However, in this case, counsel for the respondents are inadvertently in error. The bill was filed May 15th, 1883, more than eighteen months before the expiration of the patent, and there is no case which goes so far as to hold that that is too late.

The objection to the jurisdiction of the court is, however, pressed upon the following facts, which appear in the agreed statement submitted for the hearing:

"That the defendants have had in use on their farm, for the past seven or eight years, one or more driven wells, which wells were put down for the defendants by an ordinary well-driver in the following manner: A tube, in which the lower portion was perforated
71 with small holes and the lower end provided with a point, was driven into the ground until it projected into the water without removing the earth upwards, as in boring; the water then entered the tube through the perforations, and was pumped up through the tube by an ordinary pump.

"That the defendants have never driven wells for themselves, except as above described, or for other purposes; never have sold or offered for sale driven wells, or the material for driving them, but have simply used their own wells for their personal use on their farms."

The objection to the jurisdiction is that the patent is for a process, and not for a well constructed in a particular manner, and that the act of infringement consisted in the use of the process, not in the use of the article made by the process. But precisely these objections have been overruled in several cases after full argument—Andrews *v.* Carman *et al.*, 13 Blatchf., 307; Andrews *v.* Cross, 19 Blatchf., 294, where Judge Blatchford held that "the defendant has infringed by using a pump in a driven well constructed in a house hired by him to obtain a supply of water for the use of his family. Although he may not have paid for the driving of the well or have procured it to be driven, such use of the well was a use of the patented
72 process." Green *v.* French, 11 Fed. Rep., 591; Green *v.* Gardner, 22 Off. Gazette, 683; Andrews *v.* Creigans, 7 Fed. Rep., 477, and Andrews *v.* Eames, 15 Fed. Rep., 109, all are to the same point.

As to the defense that the reissue is invalid, and the defense that the original patent is invalid, they have been considered and over-

ruled in the cases cited, and in Hine *v.* Wahl, decided by Judge Gresham, and affirmed upon an equal division of the justices of the Supreme Court. Reference to these authorities is sufficient, without entering into details, to dispose of this cause.

The complainant may take a decree, but the patent having expired pending the litigation, and it being admitted that the complainant had an established license fee of $10 per well, an accounting will not be ordered, but the decree will be that the defendants *paid* the complainants $10 for each driven well upon their premises, with interest from the date of filing the bill, and for costs.

73 And afterwards, to wit, on the 6th day of December, 1886, an entry was made upon the journal of said court in this cause, clothed in the words and figures following, to wit:

Journal, vo. 552:

Decree.

United States Circuit Court, Southern District of Ohio, Western Division. In Equity.

FRANK O. BENNETT *et al.*
vs.
A. T. BEEDLE *et al.*
} No. 3350.

This cause coming on to be heard upon the pleadings in agreed statement of facts and arguments of counsel, the court finds the reissued letters patent sued on valid, and to have been infringed by def't, and that the compl'ts have an established license fee of $10 per well driven by the process described and claimed in the patent, for which said sum, and interest from the 15th day of May, 1883, the date of filing the bill herein, the complainants are entitled to a decree which, to the first day of this term, amounts to $12.03.

The patent having expired, it is ordered, adjudged, and decreed that the court do recover the sum of $12.03 per well driven
74 in accordance with said patent, with interest from the 5th day of October, 1886, and his costs, to be taxed.

An appeal being prayed by defendants it is allowed, and bond fixed at $250, and it is ordered that the other causes pending in this court on said patent be stayed until such appeal has been decided by the Supreme Court, and no entry or decree be made in them pending said appeal.

And afterwards, to wit, on the 17th day of Dec, A. D. 1886, the following appeal bond was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Appeal Bond.

75 Circuit Court of the United States, Southern District of Ohio.

FRANK O. BENNETT, AMELIA H. BENNETT, and HENRY B. BENNETT, Compl'ts,

vs.

A. T. BEEDLE, Defendant.

Know all men by these presents that we, A. T. Beedle, as prinpal, and George W. McAlpin and W. McAlpin, as sureties, are held and firmly bound unto Frank O. Bennett, Amelia H. Bennett, and Henry B. Bennett in the sum of two hundred and fifty dollars, to be paid to the said Frank O. Bennett and others, their executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this — day of ——, 18—.

Whereas the above-named defendant has taken out an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled action by the circuit court of the United States for the southern district of Ohio:

Now, therefore, the condition of this obligation is such that if the above-named A. T. Beedle shall prosecute his said appeal to effect and answer all damages and costs if he shall fail to make good his plea, then this obligation to be void; otherwise, to remain in full force and virtue.

A. T. BEEDLE. [SEAL.]
GEO. W. McALPINE. [SEAL.]
W. McALPINE. [SEAL.]

Sealed and delivered in presence of—
ARTHUR STERN.

The above security is approved.

GEO. R. SAGE,
District Judge of the United States, S. D. Ohio.

76 THE UNITED STATES OF AMERICA, }
Southern District of Ohio, Western Division, } *ss:*

I, Benjamin R. Cowan, clerk of the United States circuit court, within and for the division and district aforesaid, do hereby certify that the foregoing is a true, correct, and complete transcript of the proceedings had by the court aforesaid (including agreed statement

of facts, opinion, and copies of patents) in the cause wherein Frank O. Bennet *et al.* were complainants and A. T. Beedle, respondent, numbered 3350, as the same appears from the files and records now in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Cincinnati, O., this 21st day of December, A. D. 1886.

[Seal of the Circuit Court, Southern Dist. of Ohio.]

B. R. COWAN, *Clerk*,
By R. C. GURGI, *Deputy*.

Endorsed on cover: N. Ohio C. C. U. S. No. 1320. A. T. Beedle, appellant, *vs.* Frank O. Bennett, Amelia H. Bennett, and Henry B. Bennett. Filed December 27, 1886.

12-2-71

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1886.—No. 1,320.

A. T. BEEDLE, *Appellant*,
vs.
FRANK O. BENNETT *et al.* } *In Equity.*

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF OHIO.

BRIEF FOR APPELLANT.

ARTHUR STEM,
Of Counsel.

Printed by James Barclay, 124-132 Canal St., Cincinnati, O.

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BRIEF FOR APPELLANT.

ABSTRACT OF CASE.

This is a suit in equity in the United States Circuit Court or the Southern District of Ohio by Frank O. Bennett, Amelia H. Bennett, and Henry B. Bennett, exclusive owners for the State of Ohio of re-issued letters patent of the United States, No. 4,372, issued May 9, 1871, to Nelson W. Green, for improvements in "*methods of constructing*" artesian wells, against A. T. Beedle, for infringement of said letters patent; and the bill prays an injunction and account.

The case was submitted to the court on an agreed statement of facts, and was heard before his Honor Judge Sage, and on the 6th day of December, 1886, a decree was entered in favor of complainants, sustaining said patent, adjudging the defendant an infringer, and awarding complainants damages in the sum of $10 per well, with interest from the date of the filing of the bill, and costs. As the patent had expired, no injunction was granted.

The agreed statement of facts upon which the case was tried admitted the issue of the original and re-issued patents,

the complainants' title, and admitted that the defendant has had in use on his farm, for seven or eight years, a well, or wells, put down by an ordinary well-driver in the following manner: "A tube, of which the lower portion was perforated with small holes, and the lower end provided with a point, was driven into the ground until it projected into the water, without removing the earth upward: as in boring. The water then entered the tube through the perforations, and was pumped up through the tube by an ordinary pump." [illegible]t defendant had never driven wells for himself except as above described, or for other purposes, never had sold or offered for sale driven wells or the material for driving them, but had simply used his own well for his own personal use on his farm."

The original patent was made part of the record, and it was admitted by complainants that the patentee had made his alleged discovery as early as June, 1861, when he put down, on his own grounds, his first experimental driven well; and later, in October, 1861, he publicly drove a well, in the manner described in his patent, at the fair grounds at Courtland, N. Y., for the benefit of the soldiers in camp there, and gave orders for the construction of proper apparatus for the driving of wells, and made arrangements for its transportation with his regiment to the seat of war; that owing to personal troubles in which he became involved, by reason of shooting a fellow-officer, he never made an application for a patent until after November, 1865, after seeing advertisements in the papers that driven wells were being put down by others. It was also admitted that the complainants' established license was $10 per well.

The claim of the patent is: "The *process of constructing wells* by driving or forcing an instrument into the ground until it is projected *into the water*, without removing the earth upward as it is in boring, substantially as herein described."

The defenses made were, want of jurisdiction of a court of equity, invalidity of re-issue by reason of expansion and

latches, more than two years having elapsed between the date of the original and the application for a re-issue; prior public use by the inventor and abandonment and non-infringement.

The court found for the complainant on all these issues, and awarded damages at the license fee of $10 per well.

ASSIGNMENT OF ERROR.

The Circuit Court erred to the prejudice of appellant in this cause:

1. In holding that a court of equity had jurisdiction to try the issues submitted.
2. In holding that the re-issue patent sued on is valid.
3. In holding that there was no such prior public use before the application of the original patent as to invalidate the patent.
4. In holding that the defendant was an infringer.

ARGUMENT.

The appellant would not presume to bring to this court a case involving so apparently trifling a sum, but for the fact that there are many hundreds of cases pending on this patent throughout the country, awaiting a decision by this court, and consequently there are in reality many thousands of dollars involved.

His Honor Judge Sage recites in his opinion that one suit brought on this patent, in which the patent was sustained, was taken up and affirmed by a divided court. We have no report of that case, and do not know the issues raised or questions decided. It will also appear, from the opinion in this case, that a number of the Circuit Courts have had this patent before them, and a majority have held the patent valid, and the Circuit Court in this case followed that majority without discussing the merits.

WANT OF JURISDICTION IN EQUITY.

The prayer in the bill of complaint is for an injunction and account.

The appellant submits that a court of equity was without jurisdiction to grant the relief prayed, for the reasons:

First—That there was no ground for an injunction or equity jurisdiction.

Second—There was a complete remedy at law.

There was no reason for the intervention of a court of equity because, at the time of the filing of the bill the defendant was not infringing or threatening to infringe the patent. If he had ever been guilty of infringement by reason of the construction of the well, it was not a continuing act. It was completed and ended long prior to the filing of the bill.

It was expressly admitted by complainants that the defendant was not, at the time of the filing of the bill, engaged in constructing wells according to the patent or threatening to do so. He had long since completed the only acts which could be held to infringe the patent, viz.: having a well constructed on his farm.

A court of equity will not intervene to issue an injunction where no present or threatened infringement or damage is shown.

A process patent is infringed only by the use of the process, and not by the use of the product resulting from the process. The patent is clearly for a process of sinking a well. It is entitled an "Improvement in *methods* of *constructing* artesian wells." The patent says: "The invention consists in *producing* the well by driving," etc. "In a process or method," not in the product or article itself. Any one using the process or "method" of constructing a well would infringe; but the well once constructed, the use of it would not be an infringement. A dentist, in filling teeth, may use a patented process and be guilty of infringement, but the patient may use his teeth without infringing the patent.

In the case of Elizabeth *vs.* Pavement Co., 97 U. S., 126, this court held that the town of Elizabeth made itself liable in damages for constructing pavements in accordance with the process covered by the patent, and should be enjoined from *continuing to construct* them during the life of the patent, but no injunction could issue forbidding the use of the pavements already laid.

Defendant was not, it is admitted, continuing to construct wells, was not threatening to do so, or contributing in any way to a continuing infringement; he was simply using the product of a past and completed act. There was therefore no ground for the intervention of a court of equity to grant an injunction to prevent damage to complainant.

If the proof or state of facts had not expressly shown that there was no continuing or threatening infringement, but that the act complained of was computed and ended long prior to the filing of this bill, the complainant might have been entitled to an injunction.

The Circuit Court, however, held that the patent had been construed by Judge Benedict, in Andrews *vs.* Carmen, to cover the *use* of a well constructed according to the patent, although the user had had nothing to do with its construction.

That finding had been followed in other circuits. The court simply dismissed this defense without discussion.

If this construction of the claim of the re-issue is correct and sound, there is nothing in this defense. The respondents were then infringing the patent at the date of filing the bill, and ought to have been enjoined.

If the re-issue claim embraced the *use* of a pump attached to a well sunk as described in the patent, a passing stranger who used the pump to draw a drink of water was an infringer, and our argument is vain. We will, however, revert to the correctness of this construction in discussing the validity of the re-issue.

If our position is correct, that the claim is for a process of

sinking wells, and not for the use of the product, then the complainant had a complete remedy at law.

Even if there had been need of an account to ascertain the damages, an account in a patent case is only an incident to the right to an injunction, and a court of equity will not entertain a bill for an account where the complainant does not pray an injunction, and was *not entitled at the time of filing the bill to an injunction.*

Root *vs.* Railway, 105 U. S.; Kerr on Injunctions, 41.

"It is the fundamental characteristic and limit of the jurisdiction in equity that it can not give relief when there is a plain and adequate and complete remedy at law; and hence, it had no original, independent and inherent power to afford redress for breaches of contract or torts by awarding damages; for to do that was the very office of proceedings at law. When, however, relief was sought which equity alone could give, as by way of injunction to prevent a continuance of the wrong, in order to avoid multiplicity of suits and to do complete justice, the court assumed jurisdiction to award compensation for the past injury."

Root *vs.* Railway.

Again, the complainant had, as admitted in the stipulation, and found by the court, an established license fee which was the measure of damages, and which was recoverable at law.

INVALIDITY OF RE-ISSUE.

The original patent is dated January 14, 1868. The re issue is dated May 9, 1871, and was applied for February 24, 1871, more than two years after the date of the original and more than nine years after the date of the public construction of a well, which "demonstrated to the patentee's complete satisfaction its success." (Agreed statement of facts.)

The history of this re-issue is a singular illustration of the evil which the too strict observation of the rule of comity some-

times works. As a matter of fact the validity of this re-issue has never been fully discussed or presented to any court, or when it has, the question has been dismissed as *res adjudicata*, except in the case of Andrews *vs.* Hovey, where it was held invalid. In the first case brought on this re-issue, in 1876, Judge Benedict said: "I have now disposed of all the issues which have been seriously contested in this important case. There are several objections taken to the patent as a re-issue, but they have not been greatly pressed, and I do not find in any of them ground for declaring the re-issue void. I have given to these objections all the attention they appear to deserve, but it seems hardly worth while to extend this opinion by a statement of the reasons which have led me to reject them. I content myself with saying that I consider the original patent to have been for a process, as is the re-issue, and that the process I find described in the re-issue is also to be found described in the original."

The next case decided by Judge Nelson, in 1877, dismisses this question with a few words. He lays down the law on the subject as follows: "To impeach a re-issue, which is *prima facia* evidence that it is for the same invention, it must appear in the absence of fraud that the invention described therein is repugnant to the original." (13 O. G., 969.) In the various cases decided since the Circuit Courts have simply regarded the question settled, except in the case of Andrews *vs.* Hovey, 16 Fed. Rep., 389, when the Circuit Court held it invalid.

For the more ready comparison of the re-issue and original we have printed them below in parallel columns, and the new matter in the re-issue in italics.

UNITED STATES PATENT OFFICE.

NELSON W. GREEN.

Improvement in Methods of Constructing Artesian Wells.

Specification forming part of Letters Patent No. 73,425, dated Jan. 14, 1868.

ORIGINAL.

Be it known that I, Nelson W. Green, of Cortland, in the county of Cortland and State of New York, have invented a new and useful improvement in the manner of sinking and constructing artesian or driven wells where no rock is to be penetrated, and of raising water therefrom; and I do hereby declare the following to be a full, clear, and exact description of the same, reference being had to the accompanying drawings, making a part of this specification, in which—

Figure 1 represents a portion of the rod which is driven or forced into the ground to form the opening or hole for the insertion of the tube that forms the casing or lining of the well and the avenue through which the water is raised to or above the surface of the ground, and Fig. 2 represents a portion of the tube.

My invention consists in driving or forcing an iron or a wooden rod with a steel or iron point into the earth until it is projected to or into the water, and then withdrawing the said rod and inserting in its place a tube of metal or wood to the same depth, through which and from which the water may be drawn by any of the usual well-known forms of pumps.

To enable others skilled in the art to make and use my invention, I will proceed to describe the same with reference to the drawings.

Specification forming part of Letters Patent No. 73,425, dated January 14, 1868; Re-issue No. 4,372, dated May 9, 1871.

RE-ISSUE.

Be it known that I, Nelson W Green, of Amherst, in the county of Hampshire, and State of Massachusetts, have invented a new and improved method of constructing Artesian Wells; and I do hereby declare that the following is a full, clear and exact description of the same, reference being had to the accompanying drawings, forming part of this specification.

My invention is particularly intended for the construction of Artesian wells in places where no rock is to be penetrated.

The methods of constructing wells previous to this invention were what have been known as "sinking" and "boring," in both of which the hole or opening constituting the well was produced by taking away a portion of the earth or rock through which it was made.

(Figure 1 represents a portion of the pointed rod above mentioned, and Fig. 2 a portion of the tube which forms the casing or lining of the well.)

This invention consists in producing the well by driving or forcing down an instrument into the ground until it reaches the water, the hole or opening being thus made by a mere displacement of the earth, which is packed around the instrument and not removed upward from the hole, as it is in boring.

The instrument to be employed in producing such a well, which, to distinguish it from "sunk" or "bored" wells, may be termed a "driven" well, may be any that is capable of sustaining the blows or pressure necessary to drive it into the earth; but I prefer to employ a pointed rod, which, after having driven or forced down until it reaches the water, I withdraw and replace by a tube made air-tight throughout its length, except at or near its lower end, where I make openings or perforations for the admission of water; and through and from which the water may be drawn by any well-known or suitable form of pump.

In certain soils the use of a rod preparatory to the insertion of a tube is unnecessary, as the tube itself, through which the water is to be drawn, may be the instrument which produces the well by the act of driving it into the ground to the requisite depth.

To enable others to make and use my invention, I will proceed to describe it with reference to the drawings, in which—

Figure 1 represents a portion of the pointed rod above mentioned, and Fig. 2 a portion of the tube which forms the casing or lining of the well.

The driving-rod A, I construct of wood or iron or other metal, or of parts of each, with a sharp point, *b*, of steel, or otherwise, to penetrate the earth, and a slight swell, *a*, a short distance above the point, to make the hole slightly larger than the general diameter of the rod. This rod I drive by a falling weight or other power into the earth until its point passes sufficiently far into the water to procure the desired supply. I then withdraw the rod and insert in its place the iron or wooden tube B, which may be slightly contracted at its lower end to insure its easy passage to its place. In general, this tube B, I make of iron, and of a thickness that will bear a force applied at its upper extremity sufficient to drive or force it to its place; and where a large or continuous flow of water is desired, I perforate this lower end of the tube to admit the water more freely to the inside.

The perforations *c* may be about one half of an inch in diameter (less or more), and from one to one and a half inch apart; and the perforations may extend from the bottom of the tube upward from one to two feet. The diameter of the tube should be somewhat smaller than the diameter of the swell *a* on the drill end of the driving-rod A.

In localities where the water is near the surface of the ground, and the well is for a temporary use only, as in the case of a moving army, or for temporary camps, lighter and thinner material than iron may be used for making the tubes—as, for instance, zinc, tin, copper, or sheet metal of other kind, or even wood may be used. The rod may be of any suitable or practical size that can be readily driven or forced into the ground, and may be from one to three inches in diameter.

Any suitable well-known pump may be applied to raise the water up through the tube to the surface or above it.

I am aware of James Suggett's patent of March 29, 1864, and I disclaim all secured to him therein

Having thus fully described my invention, what I claim, and desire to secure by Letters Patent, is—

The herein-described process of sinking wells where no rock is to be penetrated—viz: by driving or forcing down a rod to and into the water underground, and withdrawing it and inserting a tube in its place to draw the water through, substantially as herein described.

The driving-rod A, I construct of wood or iron or other metal, or of parts of each, with a sharp point, *b*, of steel or otherwise, to penetrate the earth, and a slight swell, *a*, a short distance above the point, to make the hole slightly larger than the general diameter of the rod. This rod I drive by a falling weight or other power into the earth until its point passes sufficiently far into the water to procure the desired supply. I then withdraw the rod and insert in its place the air-tight iron or wooden tube B, which may be slightly contracted at its lower end to insure its easy passage to its place. In general this tube B I make of iron and of a thickness that will bear a force applied at its upper extremity sufficient to drive or force it to its place, and where a large or continuous flow of water is desired I perforate this tube near its lower end to admit the water more freely to the inside.

The perforations *c* may be about one half of an inch in diameter (less or more), and from one to one and a half inch apart, and the perforations may extend from the bottom of the tube upward from one to two feet. The diameter of the tube should be somewhat smaller than the diameter of the swell *a* on the drill end of the driving-rod A.

In localities where the water is near the surface of the ground and the well is for temporary use only, as in the case of a moving army or for temporary camps, lighter and thinner materials than iron may be used for making the tubes—as, for instance, zinc, tin, copper, or sheet metal of other kind, or even wood may be used.

The rod may be of any suitable and practical size that can be readily driven or forced into the ground, and may be from one to three inches in diameter.

In some cases the water will flow out from the top of the tube without the aid of a pump. In other cases the aid of a pump to draw the water from the well may be necessary. In the latter cases I attach to the tube by an air-tight connection any known form of pump.

What I claim as my invention, and desire to secure by Letters Patent, is—

The process of constructing wells by driving or forcing an instrument into the ground until it is projected into the water without removing the earth upward, as it is in boring, substantially as herein described.

It will be noticed that, immediately preceding the claim in the re-issue, the following clause, among others, was added (no such clause having been in the original): "In some cases the water will flow out from the top of the tube without the aid of a pump. In other cases the aid of a pump to draw the water from the well may be necessary. In the latter cases I attach to the tube, by an air-tight connection, any known form of pump."

Under this clause his Honor Judge Benedict gave to the claim or patent a construction which has been followed in nearly all the circuits since, and which we believe was entirely erroneous, and has caused a vast amount of injustice and enabled unscrupulous speculators in patent rights to demand and collect from the farmers in the West thousands of dollars, to which they had no claim, under the formidable threat of a suit in the Federal Court.

Judge Benedict said: "I, therefore, understand this patent to be a patent for a process, and that the element of novelty in this process consists in the driving of a tube tightly into the earth, without removing the earth upward, to serve as a well pit, and attaching thereto a pump, which process puts to practical use the new principle of forcing the water in the water-bearing strata of the earth, from the earth into a well pit, by the use of artificial power applied to create a vacuum in the manner described."

If this interpretation of the re-issue is correct, we think it is such an expansion of the original patent as to be invalid, and is for an entirely different invention. As this decision of Judge Benedict has been the foundation of all the subsequent decisions, we may properly examine the argument or reasons which led him to his conclusions. He holds that "a well is not a machine, but a process" * * * And says further: "Plainly it was not intended, by the language of the claim, to describe fully the invention intended to be covered by the patent. Necessarily, therefore, and naturally, we are referred by the claim to the specification for the full description of the

process which the patent was intended to secure. In the specification we find stated more clearly the distinguishing features of the process, wherein it differs from any process before adopted for procuring a supply of water from the earth; for, the specification says, that an instrument is to be driven into the ground until it reaches water, having the earth packed tightly around it. It is by means of this packing of the earth tightly around the tube that the force developed by the creating of the vacuum in the well pit is brought to bear directly upon the water lying in the water-bearing stratum, to force it into the well pit, and this driven tube forms the well pit of the new invention; for, as stated, it is to be a tube made air-tight throughout its length, except at its lower end, where are to be perforations for the admission of water, and through and from which the water may be drawn by a pump. The specification also mentions the vacuum, and points out where it is to be created, for a vacuum must of necessity be formed in the well pit, and in the water-bearing stratum, by operating a pump attached to such a tube, so driven into the earth."

Now, it will be noticed that the "*distinguishing features*" which the court refers to as found in the specification were all new matter in the re issue. Not one of these "distinguishing features" was hinted at in the original in the remotest degree.

He says the tube must be air-tight by having the earth packed tightly around it. That "the force developed by the creating of the vacuum in the well-pit is brought to bear directly upon the water lying in the water-bearing stratum, to force it into the well pit; and this driven tube forms the well-pit of the new invention; for, as stated, it is a tube made air-tight," etc. Not one word of this, or suggesting this, is found in the original patent, if, indeed, it is found in the re-issue. He says "the specification also mentions the vacuum, and points out where it is to be created."

Where is all this found in the original? Where is it sug-

gested? How can it be reconciled with the description and claim?

The patentee says nothing of drawing water from a water bearing stratum by means of a vacuum, but, on the contrary, says his tube or rod "is driven down into the earth until its point passes sufficiently far *into the water* to procure the desired supply;" and "any suitable well known pump may be applied to *raise* the *water up through* the tube to the surface above it."

His claim was: "The herein described process of *sinking wells* where no rock was to be penetrated, etc."

This process was by driving a rod *to and into* the water, then withdrawing it and inserting a tube.

It was simply a quick and economical way of getting at the water.

It is rather too late to attempt to endow his claim with these attributes and "distinguishing features" nearly ten years after its public application and five years after his application for his patent.

The patent surely comes within the rule laid down by this court in Miller *vs.* Brass Co. and the numerous decisions which have followed.

It was applied for more than two years after the date of the original.

It is, if thus construed, for an entirely different invention from that shown and claimed in the original. It is so different that it is difficult to recognize any connection or relation between the two.

If, on the other hand, the re issue is construed as limited to the invention described and claimed in the original, that is for "a process of constructing a well," then the defendant was not infringing, or threatening to infringe, the patent when the suit was brought. If the complainants had any rights against him, it was merely the right to recover damages for a tort committed years before. He had no standing in a court of equity, as he had a complete remedy at law.

PRIOR PUBLIC USE.

The appellant contends that the patentee publicly used his invention more than two years before he applied for his patent, and thereby forfeited his right to a patent under the act of 1839.

It is admitted by appellees that in June, 1861, the patentee constructed a well on his own grounds at Courtland, N. Y., "for the purpose of demonstrating his discovery;" and in October of the same year he *publicly* drove a well in the manner described in the patent, at the fair grounds in Courtland, for the use of the soldiers in camp; that he did not apply for his patent until 1866. We think the simple statement of the facts is all that need be said upon this subject.

This court held in Shaw *vs.* Cooper, 7 Pet., 292, that "Vigilance is necessary to entitle an individual to the privileges secured under the patent law. It is not enough that he should show his right by invention, but he must secure it in the mode required by law; and if the invention, through fraudulent means, should be made known to the public, he should assert his right immediately, and take the necessary steps to legalize it The patent law was designed for the public benefit, as well as for the benefit of inventors. * * * No matter by what means an invention may be communicated to the public before a patent is obtained, any acquiescence in the public use by an inventor will be an abandonment of his right. If the right were asserted by him who fraudulently obtained it, perhaps no lapse of time could give it validity. But the public stand in an entirely different relation to the inventor. The invention passes into the possession of innocent persons, who have had no knowledge of the fraud, and at a considerable expense, perhaps, they appropriate it to their own use. A strict construction of the act, as it regards the public use of an invention before it is patented, is not only required by its letter and spirit, but also by sound policy. * * * The doctrine of

presumed acquiescence, where the public use is known or might be known to the inventor, is the only safe rule which can be adopted on this subject. * * * Whatever may be the intention of the inventor, if he suffers the invention to go into public use through any means whatever, without an immediate assertion of his right, he is not entitled to a patent, nor will a patent obtained under such circumstances protect his right."

And again, in Consolidated Fruit Jar Co. *vs.* Wright, 94 U. S., 96:

"The inventor must comply with the conditions prescribed by law. If he fails to do this, he acquires no title, and his invention or discovery, no matter what it may be, is lost to him, and is henceforward no more his than if he had never been in anywise connected with it. It is made, thereupon, as it were by accretion, irrevocably a part of the domain, which belongs to the community at large."

What constitutes a public use is defined in Egbert *vs.* Lippman, 104 U. S., 333, where it was held that "to constitute a public use of an invention, it is not necessary that more than one of the patented articles should be publicly used. If an inventor, having made his device, gives or sells it to another, to be used by the donee or vendee without limitation or restriction or injunction of secrecy, and it is so used, such a use is public, even though the use and knowledge of the use may be confined to one person."

Here, after the success of the invention had been demonstrated in June, Green, in October, 1861, publicly used his process at the fair grounds. Such a public use was, to that extent, giving it to the public. Any one who saw the well constructed was at perfect liberty to use the process without limitation or restriction. No secrecy was exercised or enjoined. Four or five years later, when he saw by advertisements in the paper that the public had been using the process of constructing wells, he comes in and applies for a patent.

DEFENDANT NEVER INFRINGED.

We have already shown that at the time of filing the bill the defendant was not infringing the claim, and had not been doing so or threatening to for a number of years. We contend, further, that he never had infringed the patent.

The stipulation shows:

"That the defendant has had in use on his farm, for the past seven or eight years, one or more driven wells, which wells were put down for defendant, by an ordinary well-driver, in the following manner: A tube, of which the lower portion was perforated with small holes, and the lower end provided with a point, was driven into the ground until it projected into the water, without removing the earth upward, as in boring. The water then entered the tube through the perforations, and was pumped up through the tube by an ordinary pump.

"That the defendant has never driven wells for himself, except as above described, or for other purposes; never has sold or offered for sale driven wells or the materials for driving them, but has simply used his own wells for his personal use on his farm."

The claim of the patent being for the process of driving the well, and not for the well itself, the defendant, to infringe, must have driven wells by that process. He is not shown to have done this. The well-drivers drove the wells under contracts with the defendant for an agreed amount per well, and were in no sense the servants or agents of the defendant, but were independent contractors. The defendant is no more liable for the tort than is the owner of a piece of ground liable for an injury to a workman, caused by the negligence of an independent contractor, engaged in putting up a building on said ground, under contract with the owner, and in no way under the control or direction of the owner. It is a well-established and elementary law that in such case the contractor, and not the owner of the property, is the responsible party. In the case at bar, there can be no doubt that the well-drivers alone were the infringers, and are responsible.

ARTHUR STEM,
Counsel for Appellant.

122-71

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.—No. 1320.

A. T. BEEDLE, APPELLANT,

vs.

FRANK O. BENNET, ET AL., APPELLEES.

Appeal from the Circuit Court of the United States for the Western Division of the Southern District of Ohio.

BRIEF FOR APPELLEES.

JOHN F. FOLLETT,
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Counsel for Appellees

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.—No. 1320.

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BRIEF FOR APPELLEES.

This cause comes into this Court upon appeal from the Circuit Court of the United States in and for the Western Division of the Southern District of Ohio.

The Bill was filed in May, 1883, by Frank O. Bennet, Amelia H. Bennet and Henry B. Bennet, exclusive owners for the State of Ohio, of reissued Letters Patent of the United States No. 4372, issued May 9th, 1871, to Nelson W. Green, for "Improvements in methods of constructing Artesian wells," against A. T. Beedle, alleging that he had infringed said Letters Patent, and praying for an injunction and an account.

This is a representative of a very numerous class of suits in

equity brought in Ohio, and elsewhere, to test the validity of what is known as The Driven Well Patent.

The evidence in this case is all embraced in an agreed statement of facts, upon which, after full argument, it was submitted to the Court. On the 6th of December, 1886, the Circuit Court, his Honor Judge Sage delivering the opinion, rendered a decree in favor of complainants, sustaining the validity of the reissued Letters Patent, adjudging the defendant to be an infringer and awarding damages in favor of complainants in the sum of ten dollars per well, with interest from the date of filing the bill, and for costs. The life of the patent having expired pending the litigation, no injunction was allowed.

The defenses relied upon by counsel for appellant in his brief, with which we have been favored, are four in number, to-wit:

1. Want of equity jurisdiction in the Circuit Court to try the issues submitted,
2. Invalidity of the reissued Letters Patent,
3. Prior public use by the inventor and abandonment, and
4. Denial that defendant is an infringer.

We insist that neither of these propositions of law is well taken or is in consonance with the utterances of this Court. In our argument we shall discuss them briefly in the order in which they have been stated.

We desire, before entering upon the argument of the questions presented by the record in this cause, to call the Court's attention a little more fully than has been done by counsel for appellant in his brief to the agreed statement of facts upon which it was submitted to the Court below. Let us quote a paragraph or two from the agreed statement of facts:

"It is agreed that Nelson W. Green was the patentee of a new

and valuable process in the construction of wells, and claimed to be its first and original inventor, for which process he received original Letters Patent of the United States, No. 73,425, on the 14th day of January, 1868, and for which reissue Letters Patent No. 4,372 were granted to Nelson W. Green on May 9th, 1871, the application for which having been filed February 24th, 1871. * * *

* * * * * * * *

"That the said N. W. Green made his alleged invention or discovery as early as 1861, when he put down on his own grounds at Cortland, New York, the first driven well, for the purpose of demonstrating his discovery.

"That he at the time of his alleged invention claimed to have made a valuable discovery and to have invented a new process.

"That he then declared an intention to secure his process by Letters Patent and expressed his belief that large profits would accrue therefrom. * * * * * * *

"That in June, 1861, he put down a well at his house in Cortland, and in October, 1861, he publicly drove a well in the manner described in his original patent at the fair grounds near Cortland, for the use of the soldiers in camp, and demonstrated to his own complete satisfaction its success. * * * * * *

"That the said Green during this period aforesaid" [from June, 1861, to November, 1865, when application for Letters Patent was formally made] "never declared any intention of abandoning his said discovery and invention, and that, having so made his application as aforesaid, original Letters Patent were granted the said N. W. Green January 14th, 1868. * * * * * *

"It is further admitted that the complainants' price for settling for infringement under the above patent, without suit, has been ten dollars ($10) per well and the recognition of complainants' rights, and that the complainants offered to settle on such terms with this defendant before bringing suit, which offer was refused."

Argument.

I.

It is claimed that this Court has no jurisdiction because the complainants are not entitled to bring this suit in equity, for the reason that they have a complete and adequate remedy at law.

It is strenuously contended by counsel for appellant that the case of *Root* v. *The Railway Company*, 105 U. S. 189, supports the proposition for which he contends.

Mr. Justice Matthews delivered the opinion of this Court in that case, and his reasoning must be confined to the proposition which was before the Court. As we understand the law, up to that time there had been no decision of this Court which denied the equity jurisdiction of the Circuit Court of the United States, in any case brought by a patentee or his assignee for the infringement of a patent during the life of the patent. On the contrary, there are numerous expressions in various cases recognizing the principle that, by virtue of the legislation of Congress, and especially by the act of 1870, the owner of a patent had his election, during the life of the patent, either to proceed in equity, asking for a remedy against the infringement of the patent, or to proceed at law, asking for damages against the infringer. It had been decided in some of the Circuit Courts that Congress had not only intended to invest the Circuit Courts of the United States with equity jurisdiction during the life of the patent, but that it had also intended that there should be a jurisdiction in equity even after the expiration of the patent for an account of profits that might have been realized by the infringer during the life of the patent, and it was upon this broad claim that this Court in the case already referred to was called upon to pass upon this question. The opinion of Mr. Justice Matthews was to the effect that the 55th Section of the act of 1870 was not intended by Congress to confer equity jurisdiction upon the Circuit Courts of the United States, after the expiration of the patent, because the statute itself provided that the Circuit Court had jurisdiction in cases only where a party had a right to ask for an injunction, and inasmuch as no injunction would be granted after the expir-

ation of the patent, the courts of law afforded ample opportunity for redress, and there was nothing peculiar in the character of the relief which could be asked for after the expiration of the patent which would authorize courts of equity to take jurisdiction, and in that view he applied the principle which is well known, that courts of equity never grant relief when there is a plain and adequate remedy at law. We shall endeavor hereafter to show from the language of the opinion of Mr. Justice Matthews, that he did not intend to cover, nor did this Court in that decision intend to cover, any other question than the one which was then before it. As we have remarked, at that time it had been well established, both in practice and by numerous decisions, that the owner of a patent during the life of the patent had his election to proceed either at law or in equity.

In the case of *Parks* v. *Booth*, 102 U. S. 96, Mr. Justice Clifford, in delivering the opinion of the Court, on page 97, says:

"Provision is also made that a party whose rights, secured by valid patent, are invaded by infringement, may seek his remedy in an action at law, or by a suit in equity, at his election. Federal Courts vested with jurisdiction in such cases have power in their discretion to grant injunctions to prevent the violation of any right secured by a patent, as in cases of equity cognizance."

And again, in the case of *Marsh* v. *Seymour*, 97 U. S., p. 348, the same Justice, delivering the opinion of the Court, on p. 349, says:

"Owners of a patent, whether patentees or assignees, may seek redress for the unlawful use of the improvement it secures in the Circuit Court by a suit at law or in equity at *their option*, but in either form of proceedings they must allege and prove that they or those under whom they claim are the original and first inventors of the improvement, and that the opposite party or parties have infringed their exclusive right to make or use the same, or vend it to others to be used."

And to the same effect is the case of *Aqua Company* v. *Jordan*, 7 Wall. 593.

That this Court, in the case of *Root* v. *The Ry. Co.*, did not intend to in any way overrule and modify its former decisions on this point, is very evident from the opinion of Mr. Justice Matthews. On page 204, in referring to the case of The Eureka Company against The Bailey Company, 11 Wall. 488, the learned Justice says:

"That case is no exception to this remark, although in respect to it the observation has been made that the injunction prayed for in that case was incidental to the account, and not *vice versa*. That view is a misconception; for, unless upon the ground of a difference in citizenship, the Court would not have had jurisdiction to entertain the bill in that case, *if it had not prayed for an injunction*. For the mere purpose of enforcing the contract for the royalty, it was not a case arising under the patent laws, so as to give jurisdiction to the Courts of the United States. *It was because the defendant was guilty of an infringement of the complainant's patent that he was suable in equity in these Courts, and to restrain that an injunction was asked until he should pay what he had promised.* The *object* of the suit doubtless was to collect the royalty; but it was sought by means of, and therefore as an incident to, the jurisdiction of the Court, invoked for the purpose of enjoining the continuance of what, until the royalty was acknowledged and paid, was found to be an infringement."

Here was a distinct recognition in the broadest terms of the right of the owner of a patent to go into equity, although his purpose was simply to collect a royalty; for such was found to be the fact by the Court, and such is the construction of that decision by Mr. Justice Matthews himself.

And again, on page 201, the learned Justice says:

"Mr. Justice Clifford, in the opinion in this case, quotes a passage, slightly altered, from *Curtis on Patents*, sec. 341, *a* (4th ed.), p. 461, which, taken by itself, might seem to imply that prior to the act of 1870 the owner of a patent had the election to resort to a court of equity for the recovery of profits, or a court of law for damages, irre

spective of any other relief of an equitable character; but the language of the passage is to be restrained to mean merely that the option existed to sue at law for past infringement, or seek equitable relief by way of prevention, the damages or profits following, as either jurisdiction is resorted to, each according to its kind."

This is recognizing the claim for which we contend, that the option existed on the part of the owner of a patent to sue in either form, that he could not proceed in equity unless he asked for equitable relief, to-wit, an injunction to restrain the infringement of his patent.

And again, on page 211, he says:

"Mr. Kerr, in his treatise on Injunctions, 41, summarizes the result of many decisions, which he cites under this statute as follows: 'The statute did not transfer to the Court the general jurisdiction of common law by way of damages, or extend its jurisdiction to cases where previously to the statute it had no jurisdiction, or could not, consistently with its rules and principles, have interfered. The statute merely empowered the Court to give damages in cases involving elements or ingredients of an equitable character. If the case as presented to the Court was an equitable one, so that the subject matter of the application is properly cognizable in equity, the Court had jurisdiction under the statute to entertain the question of damages. If, on the other hand, the plaintiff had no equitable right at the time of bringing the action, so that the matter had been improperly brought into equity, the statute had no application. Damages may be awarded under the statute if it appear *that at the time of bringing the action there was an equitable case*, although the case for an injunction *fails*, or although an injunction is not competent from circumstances which have occurred since the filing of the bill.'"

So that the right of a party to go into equity and ask for an injunction, and entitle himself to damages or profits, is not dependent upon the action of the court in granting the injunction, for, if it were, a court of equity could only proceed in the case and give the parties relief by way of accounting for profits or any damages where it would have granted an injunction. It is

held in England and in this country by the highest Courts that the right of a court of equity to proceed and afford the party relief will be exercised at the final hearing after the patent has expired, although the Court can not grant any relief by way of injunction, and the exercise of this jurisdiction depends upon the fact that if the party, at the time that he brought his suit, had the right to go into a Court of equity, a Court of equity will not turn him out because it can not grant him all the relief for which he asks, but on the other hand will administer such relief as it can. The statutes of the United States confer upon the owners of patents the exclusive right to make, use or vend the same. The great, and sometimes the only value in a patent consists in this exclusive right, and it was to protect this exclusive right that the right was given to the owners of patents to proceed in a Court of equity and ask for an injunction against the parties infringing this exclusive right, and the purpose of the statute was to make the jurisdiction of the Court of equity as broad as the right which the statute conferred upon the owner of the patent, making it exclusive in him. At the same time Congress recognized the fact that there would be many cases in which it would be unjust and inequitable and unnecessary to enjoin an infringer, and therefore in conferring this jurisdiction they did not take away the discretion which ordinarily exists in the chancellor to grant or refuse an injunction, depending upon the circumstances of each case. And they say that the Court shall have *power*, upon bill in equity being filed by any party aggrieved, to grant injunctions according to the course and principles of Court of equity to prevent the violation of any rights secured by patent, upon such terms as the Court may deem reasonable. But this *power* is entirely distinct from the *right* which the statute intended to confer upon the party to invoke the jurisdiction of a

Court of equity. In the case of *McMillan* v. *St. Louis Company*, 18 Fed. Rep. 260, Judge Treat passed upon this very question. The syllabus of the case is:

"Wherever during the life of a patent damages and an injunction are prayed for in a suit against an infringer, equity has jurisdiction.',

On page 261 the judge says:

"There is a demurrer in this and several other cases, all pertaining to the same question. The contention as to the first point is that the decision of the United States Supreme Court (*Root* v. *Ry. Co.*, 105 U. S. 189) establishes the doctrine that where a patentee seeks for the use of his patent merely a stipulated royalty or license, he can not proceed in equity for an infringement. That case was where damages were sought to be recovered for an infringement made against an expired patent before the expiration thereof. It does not, nor does any other case known to the Court, oust equity of jurisdiction against an infringer where injunction is sought pending the life of the patent. Hence, the demurrer as to that point is not well taken."

Great stress is also laid by counsel for defendant upon the fact that this defendant was merely a user and that therefore, the Court ought not to grant any relief to complainants. If such is the fact, there is certainly very little, if any, value in a patent of this kind. Its principal value, and almost its exclusive usefulness, is to owners of property who drive these wells for their own personal use, and if a court of equity could not grant relief simply upon the ground that the parties were not making any profits out of them, although if in constructing one of these wells they should save a hundred dollars (the making of a well being cheapened that much by this process), it would be an unjust and monstrous doctrine, and one for which we find no authority in the decided cases. Take the litigation that has resulted from this very patent and in the numerous decisions it will be observed that they have, with one exception, been against parties who were using these wells for their own personal advantage. Upon

this point, we refer to the decisions in respect to this patent of then Judge, now Mr. Justice Blatchford, of Judges Gresham, of Indiana, Nixon, of New Jersey, Shipman, of Connecticut, and Wheeler, of New York, in all of which cases the facts showed that the defendants were, as in this case, users of complainants' patent, and yet the injunction followed in every one of these cases.

Counsel for appellant also cites the case of *Elizabeth* v. *The Pavement Company*, 97 U. S., 126, and claims that that is an authority why a user, where the party has made no profit out of it, would not justify a suit in equity, but counsel have overlooked the fact, which is very clearly pointed out by Mr. Justice Matthews in the case of *Root* v. *Railway Company*, on pages 202 and 203, that the suit of *Elizabeth* v. *The Pavement Company* was brought before the act of 1870, when the only relief which a court of equity could administer was to give an account for profits, and there being no profits, there would be no judgment which a court could give. But in the same volume of the reports, page 348, was decided the case of *Marsh* v. *Seymour*, which arose after the passage of the act of 1870, and there it was held that equity would retain jurisdiction because it could not only give profits, but also damages, and it being shown in the case of *Marsh* v. *Seymour* that there were no profits, plaintiff was entitled to damages, which were awarded to him on the basis of a license fee or royalty.

We do not think that, as to the other point raised in connection with this subject, namely, that there could be no infringement at the time these suits were brought, because after the process of constructing those wells was used, complainants had no right to prevent the use of the wells themselves, there is room

for argument. We submit that the very statement of the proposition is enough to show its unsoundness.

In view of the fact that the equity jurisdiction of the Circuit Court had been sustained in these cases by so many eminent judges, and that in one of the decisions appealed to this Court the judgment of Judge Gresham was affirmed by a divided Court, appellees certainly had a right to bring these suits in a court of equity. But counsel for appellant urges as a further reason why a court of equity should not have jurisdiction of this and similar cases, that appellees had an established license fee, which was the measure of damages and which was recoverable at law. This we deny. So far as appears in this case, there is nothing to show that they have an established royalty or license fee. The agreed statement of facts, which must control, and which, for the purposes of this case, is all that is before the Court, admits that appellees have been in the habit of settling with parties who had infringed for $10 and the recognition of their rights, and that, before bringing this suit, they also offered to settle on the same terms with this appellant.

It has been decided in the case of *Gottfried* v. *Crescent Brewing Company*, 22 Fed. Rep., 433, that this is not a license or royalty, and we do not think that this appellant is in a position, because an opportunity was offered to him to avoid this litigation upon so favorable terms, to make that a ground of saying that this Court ought to use that and deny the appellees all right or standing in this Court, and saddle them with these costs, notwithstanding the Court might be of the opinion that they had a valid claim and a valid right belonging exclusively to them, and the use of which they had never authorized, by any act of theirs, to this appellant.

We think, rather, the fact that these appellants endeavored

to avoid litigation, endeavored to save parties the expense of these suits by simply requiring them to recognise the validity of their patent, which had been repeatedly held valid by other courts, and the payment of a small sum, will entitle these appellees to the favorable consideration of this Court.

We desire, in this connection, to call the Court's attention to the case of *Bragg* v. *City of Stockton*, 27 Fed. Rep., 509, and especially to the language of Judge Sawyer, who rendered the opinion, on page 510, where the Court say:

"That it would seem that the injured party should be the one to elect that one of two remedies against a wrong-doer which he deems most advantageous. An injunction against further use may be preferable to a license fee. The *mere license fee is not a complete recompense when the patentee is driven to the expense of a law suit by the wrong-doer.*"

This we think peculiarly applicable to the case under consideration.

The agreed statement of facts admits that appellees offered to settle with appellant for the sum of ten dollars and a recognition of their rights, which offer appellant declined.

Judge Sawyer, it must be remembered, in some former decisions, was inclined to hold that there was no jurisdiction in equity against a mere user where there was an established license fee.

We believe that this Court has settled this precise question in the case of *Birdsell et al.*, v. *Shaliol et al*, 112 U. S., 485.

The principle is broadly stated that an infringer's liability arises out of his own wrongful invasion of the rights of the patentee.

MR. Justice Gray, delivering the opinion, on page 488, and adopting the language of Vice-Chancellor Wood, says:

"With regard to the damages, it has never, I think, been held in this Court that an account directed against a manufacturer of a pat-

ented article licenses the use of that article in the hands of all the purchasers. The patent is a continuing patent, and I do not see why the article should not be followed in every man's hand until the infringement is gotten rid of. *So long as the article is used, there is continuing damage.* As to the royalties, I can not compel the plaintiff to accept the same royalty from these defendants as he received from others. I can not, in the decree, do less than give the plaintiff his full right, and I can not bargain for him what he may choose, or may not choose, to do."

Citing also *Penn* v. *Bibby*, L. R. 3 Eq., 308, and S. C. 15 Weekly Reporter, 192.

II.

It is argued by appellant in his brief that the patent sued on is invalid, because the reissue is not for the same invention as that claimed in the original letters patent, and because the patentee was guilty of *laches.*

That this proposition stands without the support of the facts in this case, or the adjudications of this court, we confidently assert. Counsel for appellant would have it understood that but little attention has been given to this defense in disposing of the Driven Well cases in the Courts below. Such, however, is not the fact. The same question, raised by counsel for appellant, was involved in each of the suits hereinafter referred to. It was tried for the first time in the case of *Andrews* v. *Carman*, 13 Blatch. 307, before his Honor, Judge Benedict, and was one of the hottest contests known in patent litigation. It is true that he does not go into a long discussion upon this question of reissue, but what he says is to the point. Let us refer to his language as follows:

"I have now disposed of all the issues which have been seriously contested in this important case. There are several objections taken to the patent as a reïssue, but they have not been greatly pressed, and I do not find in any of them grounds for declaring the reissue void. I

have given to these objections all the attention they appear to deserve, but it seems hardly worth while to extend this opinion by a statement of the reasons which have led me to reject them. I content myself with saying that I consider the original patent to have been for a process, as is the reissue, and that the process I find described in the reissue is also to be found described in the original patent."

This same question arises again in the Circuit Court of Minnesota (*Andrews* v. *Wright*, 13 O. G. 969) before Judges Dillon and Nelson, and Judge Nelson, delivering the opinion of the Court, says on this subject:

"To impeach a reissue which is *prima facie* evidence that it was for the same invention, it must appear, in the absence of fraud, that the invention described therein is repugnant to the original. The two patents on examination show that they were both granted for processes of constructing wells, and the claim and specifications describe the process, which consists in driving a tube tightly into the earth until it reaches a water-bearing strata, without moving the earth upwards, and attaching to this well-pit a pump, air tight, the tube being perforated at the lower extremity and for a short distance upwards, to admit the water to the inside. The reissue is not different from the original, and the claim does not include any thing more than the patentee was entitled to."

Judge Blatchford in the case of *Andrews* v. *Cross*, 13 Blatch. 294, also sustains the reissue. It was sustained by Judge Nixon, in New Jersey, in the case of *Green* v. *French*, 11 Fed. Rep. 591, by Judge Gresham in the case of *Wahl* v. *Hine*; by Judge Shipman, in the case of *Andrews* v. *Eames*, 15 Fed. Rep. 109. In relation to this question of reissue Judge Shipman says:"

"The first defense presents a question upon which I much desired to read the views of the Supreme Court in the case of *Hine* v. *Wahl*, where the question was directly made, and in view of the fact that the Court did not declare the reissue invalid, it is not improper to regard the patent as sustained. I may add that my own opinion tends in favor of the validity of the reissue."

The only case in which there has been an adverse decision

on this point is that of *Andrews* v. *Hovey*, 16 Fed. Rep., and in that case Judge Nelson dissented, and we do not think that, under the circumstances, the decision there rendered ought to have a controlling effect in this case. As was well said by Judge Shipman, the case was before this Court and the patent was not declared invalid, and it must be remembered that this case was argued and decided after the decision of *Miller* v. *The Brass Company*, in the 104 U. S., in which the Court was unanimous, so that it could not have been considered by the Court that the case of *Miller* v. *The Brass Company* controlled the decision of the question involved here, or that it was analogous to it. We think an examination of the original and the reissue shows that they are for the same thing. In this connection we think it important to refer the Court to the case of *Crandall* v. *The Parker Carriage Company*, 20 Fed. Rep. 851, where the same question arose in regard to a patent for improvement in box loops for carriage tops, and in which, in our judgment, the reissue was fully as broad, if not broader, than the reissue in this case. And this was decided after the decision of *Miller* v. *The Brass Co.* We are informed that the same question arose in the Ohio Circuit in the Summer of 1885, before Mr. Justice Matthews and Judge Sage, in the case of *Crandall* v. *Kemper Bros.*, involving this same patent, and that the Court sustained the reissue.

The invention under consideration is not *a device*. It is *a process*. The distinction between these two classes of invention is clearly drawn by this Court in the case of *Burr* v. *Duryea*, 1 Wall. 531.

Being a *process*, and not a *thing*, the invention under consideration falls clearly within the category of inventions, which, this Court, in *Burr* v. *Duryea*, *supra*, has declared

"*consist in a new application of certain natural forces to produce* a certain

result, to which they had never before been applied, and which, when once pointed out, require no invention to construct devices for its application."

Nelson W. Green made an entirely new application of the natural force of atmospheric pressure, and produced a result to which it had never before been applied, namely, the compulsion of water from the water-bearing stratum directly into the well-pit. See also *Cochrane* v. *Deener*, 94 U. S., on page 788.

After a review of the leading cases upon process patents, Curtis thus sums up:

"These cases show that when a party has invented some mode of carrying into effect a law of natural science, or a rule of practice, *it is the application of that law or rule which constitutes the peculiar feature of his invention.*" *Curtis on Patents*, sec. 320.

The law presumes most strongly in favor of the validity of the reissue. See also

James v. *Campbell*, 104 U. S. 356;
Seymour v. *Osborne*, 11 Wall. 543–4;
O'Reilly v. *Morse*, 15 How. 112;
Rubber Co. v. *Goodyear*, 9 Wall. 796;
Klein v. *Russell*, 19 Wall. 433;
Smith v. *Goodyear Den. Vul. Co.*, 93 U. S. 486.

If the directions of the specifications of either the original or reissue letters patent be followed, the same thing will be accomplished in the same manner.

If the invention consist in the process described, and not in some tool pointed out as appropriate for use in applying the process, then the reissue is for the same invention as the original patent, and is not an unauthorized extension of it.

III.

It is claimed that the patent is invalid because the patentee forfeited his rights by delaying to apply for a patent for more than two years after the invention was in public use.

There is no evidence in this case showing that there was any public use in the sense in which that term is understood, and it is unfair for counsel to refer to facts which were before the Court in the case of *Andrews* v. *Hovey* as to the user of this patent by numerous parties, when the agreed statement of facts simply refers to two *experiments* made in 1861, both of which were clearly experiments, and in reference to which the agreed statement of facts states that after he had made these two experiments, after these two users, Green became satisfied as to the practicability of his patent. The facts, as embodied in the agreed statement of facts, are taken from the decision of Judge Benedict, and upon these facts Judge Benedict found that there was no public user of this patent as contemplated by law, and, therefore, that the patent was valid for that reason, and we do not care to go into a discussion on that point on facts which are in no wise before this Court, for we hardly think that under the strong statement of facts contained in this case, and after the decisions of these different Courts upon an identical statement of facts in favor of the validity of the patent, that this Court will desire any more discussion than we have given to this particular point.

IV.

Finally it is claimed that appellant has not infringed.

The agreed statement of facts shows,—

"That he has had in *use* on his farm for the past seven or eight years one or more driven wells, which wells were put down for him by an ordinary well-driver, in the following manner: A tube, of which the lower portion was perforated with small holes, and the lower end provided with a point, was driven into the ground until it projected into the water, without removing the earth upward, as in boring. The water then entered the tube through the perforations, and was pumped up through the tube by an ordinary pump.

"That he has never driven wells for himself, except as above described, or for other purposes: never has sold, or offered for sale,

driven wells, or the materials for driving them, but has simply used his own wells for his personal use on his farm.

This we consider an unqualified admission, at least for the purposes of this suit, of the question of infringement. But counsel for appellant claims that there can be no infringement because, according to the statement of facts, appellant had these wells put down for him by an ordinary well-driver; or, in other words, because he employed somebody to do it, and did not do it himself

Mr. Justice Blatchford, while upon the Circuit, put a construction upon language identical with that we have quoted from the agreed statement of facts in this case. In disposing of the case of *Andrews* v. *Cross*, 19 Blatch., 294, the learned Justice said:

"Under this construction, the defendant has infringed by using a pump in a driven well constructed in a house hired by him, to obtain a supply of water for the use of his family, although he may not have paid for driving the well or have procured it to be driven. Such use of the well was a use of the patented process."

The same conclusion as to the matter of infringement was reached by Judges Nixon, Wheeler, Shipman, and Gresham in the cases tried before them respectively. The cases decided by these eminent judges were much stronger for appellants than the facts admitted in this case.

In conclusion, we confidently submit that upon all the propositions of law in this case, the construction for which we contend is to be found laid down in the utterances of this Court, and we respectfully ask that the appeal may be dismissed, and the judgment of the Circuit Court affirmed.

Counsel for appellant joins us in the request that the Court

may consider this case with that of *Eames*, v. *Andrews* No. 120 of the Docket of this Term, and in which case the issues are the same as in the one herewith submitted.

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January, 1887.